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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
BRADLEY MINING COMPANY,  
et al.,  
  
Defendants.

Case No. 3:08-CV-03968 TEH

CONSENT DECREE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
BRADLEY MINING COMPANY,  
  
Defendant.

Case No. 3:08-CV-05501 TEH

TABLE OF CONTENTS

I. <u>BACKGROUND</u> .....	1
II. <u>JURISDICTION</u> .....	4
III. <u>PARTIES BOUND</u> .....	4
IV. <u>DEFINITIONS</u> .....	4
V. <u>GENERAL PROVISIONS</u> .....	11
VI. <u>STIPULATED JUDGMENT</u> .....	13
VII. <u>PAYMENTS BY DEFENDANTS AND SETTling FEDERAL AGENCIES</u> .....	13
VIII. <u>REDEVELOPMENT TRUST; DEFENDANTS' ASSIGNMENT OF PROPERTY</u> ....	21
IX. <u>FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS</u> .....	28
X. <u>DISPUTE RESOLUTION</u> .....	30
XI. <u>COVENANTS BY PLAINTIFF, SETTling FEDERAL AGENCIES, AND THE ELEM TRIBE</u> .....	32
XII. <u>PLAINTIFF'S RESERVATION OF RIGHTS</u> .....	37
XIII. <u>COVENANTS NOT TO SUE BY SETTling DEFENDANTS</u> .....	40
XIV. <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u> .....	42
XV. <u>ACCESS AND INSTITUTIONAL CONTROLS</u> .....	44
XVI. <u>FINANCIAL SECURITY</u> .....	53
XVII. <u>ACCESS TO INFORMATION</u> .....	54
XVIII. <u>RETENTION OF RECORDS; CERTIFICATION</u> .....	56
XIX. <u>NOTICES AND SUBMISSIONS</u> .....	57
XX. <u>EFFECTIVE DATE</u> .....	60
XXI. <u>RETENTION OF JURISDICTION</u> .....	61
XXII. <u>INTEGRATION/APPENDICES</u> .....	61
XXIII. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	62
XXIV. <u>SIGNATORIES/SERVICE</u> .....	62
XXV. <u>FINAL JUDGMENT</u> .....	63

1 I. BACKGROUND

2 A. The United States of America (“United States”), on behalf of the Administrator of  
3 the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter  
4 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and  
5 Liability Act (“CERCLA”), 42 U.S.C. § 9607, against Bradley Mining Company, a California  
6 corporation (“Bradley Mining”), and Frederick Bradley, in his representative capacity as Trustee  
7 of the Worthen Bradley Family Trust (“Bradley Trust”) (collectively, “Defendants”). Case No.  
8 3-08-CV-03968 TEH, Court Document No. (“DN”) 1.

9 B. The United States in its complaint seeks, inter alia: (1) reimbursement from  
10 Bradley Mining and Bradley Trust of costs incurred by EPA and the United States Department of  
11 Justice (“DOJ”) for response actions at the Sulphur Bank Mercury Mine Superfund Site in Lake  
12 County, California (“Sulphur Bank Site”), together with accrued interest; and (2) a declaratory  
13 judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Bradley Mining  
14 and Bradley Trust are jointly and severally liable for future response costs incurred by the United  
15 States in connection with the Sulphur Bank Site. Bradley Mining and Bradley Trust filed a  
16 counterclaim in this matter, alleging that the United States is liable for response costs related to  
17 the Sulphur Bank Site under CERCLA and state law. Case No. 3-08-CV-03968 TEH, DN 22,  
18 24.

19 C. The Elem Tribe alleges that Bradley Mining, Bradley Trust, and the United States  
20 are liable for: (1) damages for injury to, destruction of, or loss of natural resources related to the  
21 Sulphur Bank Site; (2) the costs of any natural resource damage (“NRD”) assessments; and  
22 (3) past and future response costs. The Elem Tribe asserts that it timely filed on Bradley Mining,  
23 Bradley Trust, and the United States all required notices of intent to sue. The Elem Tribe intends  
24 to file a motion to intervene and an attached complaint in intervention asserting a CERCLA  
25 action (“the Elem Tribe CERCLA case”).

26 D. The United States also filed a complaint against Bradley Mining in U.S. District  
27 Court in Idaho, seeking reimbursement from Bradley Mining of costs incurred by EPA, the  
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1 United States Department of Agriculture Forest Service (“Forest Service”), and DOJ for  
2 response actions at the Stibnite Mine Site in Valley County, Idaho (“Stibnite Mine Site”). Case  
3 No. 08-CV-00410 EJP (D. Idaho), DN 1. After the District Court in Idaho granted the parties’  
4 motion to transfer venue to the Northern District of California (*id.*, DN 9), Bradley Mining filed  
5 a counterclaim, alleging that the United States is liable for response costs related to the Stibnite  
6 Mine Site under CERCLA and state law. *Id.*, DN 11. This Court reassigned the Stibnite Mine  
7 Site case to Judge Henderson as a related case to the Sulphur Bank Site case. Case No. 3-08-  
8 CV-03968 TEH, DN 31. The Stibnite Mine Site case is now entitled United States v. Bradley  
9 Mining Co., Case No. 3-08-CV-05501 TEH (N.D. Cal.). Bradley Mining re-filed its  
10 counterclaim in the Stibnite Mine Site case. *Id.*, DN 4.

11 E. The United States asserts that, on behalf of various federal agencies, it resolved  
12 its alleged liability at the Stibnite Mine Site through an administrative, court-approved settlement  
13 in Mobil Oil Corp. v. United States, Civil Action No. 99-1467-A (E.D. Va.). The United States  
14 further asserts that federal agencies involved in that case, including the Forest Service, received  
15 contribution protection under CERCLA Sections 113(f)(2) and 122(h)(4) for “matters  
16 addressed,” which include any and all past or future response costs taken and to be taken by or at  
17 the direction of the United States and all response costs incurred and to be incurred in connection  
18 with the Stibnite Mine Site.

19 F. EPA sent a general notice letter to Bradley Mining notifying it that EPA regards  
20 Bradley Mining as a potentially responsible party (“PRP”) under CERCLA for costs incurred  
21 and to be incurred with respect to the Mt. Diablo Mercury Mine Site in Contra Costa County,  
22 California, also known as the Marsh Creek Road Abandoned Dump Site (“Mt. Diablo Mine  
23 Site”).

24 G. The Forest Service asserted a CERCLA cost-recovery claim against Bradley  
25 Mining seeking reimbursement of costs incurred and to be incurred with respect to the  
26 Springfield Scheelite Mine Site in Valley County, Idaho (“Springfield Mine Site”).

27 H. The United States Department of the Interior Bureau of Land Management  
28

1 (“BLM”) asserted a CERCLA cost-recovery claim against Bradley Mining seeking  
2 reimbursement of costs incurred and to be incurred with respect to the IMA Mine Site in Lemhi  
3 County, Idaho (“IMA Mine Site”).

4 I. BLM and EPA asserted a CERCLA cost-recovery claim against Bradley Mining  
5 seeking reimbursement of costs incurred and to be incurred with respect to the Bretz Mine Site in  
6 Malheur County, Oregon (“Bretz Mine Site”).

7 J. EPA asserted a CERCLA cost-recovery claim against Bradley Mining seeking  
8 reimbursement of costs incurred and to be incurred with respect to the Opalite Mine Site in  
9 Malheur County, Oregon (“Opalite Mine Site”).

10 K. The United States has requested and reviewed Financial Information from  
11 Bradley Mining and Bradley Trust to determine whether each of the Defendants is financially  
12 able to pay response costs incurred and to be incurred at the Sulphur Bank Site, the Mt. Diablo  
13 Mine Site, the Stibnite Mine Site, the Springfield Mine Site, the IMA Mine Site, the Bretz Mine  
14 Site, and the Opalite Mine Site (collectively, the “Covered Sites”). Based upon this Financial  
15 Information, the United States has determined that Bradley Mining and Bradley Trust are able to  
16 pay no more than the amounts specified in Section VII (Payments by Defendants and Settling  
17 Federal Agencies) of this Decree and the property Assignment specified in Section VIII  
18 (Redevelopment Trust; Defendants’ Assignment of Property) of this Decree.

19 L. The Settling Defendants that have entered into this Consent Decree do not  
20 admit any liability to anyone, including without limitation, the United States or the Elem Tribe  
21 arising out of the transactions or occurrences alleged in the complaints in the Sulphur Bank Site  
22 case (United States’ complaint and the Elem Tribe’s complaint in intervention) and the Stibnite  
23 Mine Site case, or concerning the Mt. Diablo Mine Site, the Springfield Mine Site, the IMA  
24 Mine Site, the Bretz Mine Site, and the Opalite Mine Site, and do not admit any of the  
25 allegations or assertions of the complaints, notice letters, or other demands, or any related  
26 liability arising out of the transactions or occurrences that have been, or could be alleged by the  
27 United States, the Elem Tribe, or others, except as otherwise specifically stated in this Consent  
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1 Decree.

2 M. The United States does not admit any liability arising out of the transactions or  
3 occurrences alleged in the counterclaims in the Sulphur Bank Site case or the Stibnite Mine Site  
4 case, or in the complaint in intervention filed in the Elem Tribe CERCLA case.

5 N. The United States, the Elem Tribe, and the Settling Defendants (the “Parties”)  
6 agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been  
7 negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and  
8 complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and  
9 in the public interest.

10 NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby  
11 ORDERED, ADJUDGED, AND DECREED:

12 II. JURISDICTION

13 1. This Court has jurisdiction over the subject matter of this action pursuant to 28  
14 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal  
15 jurisdiction over Bradley Mining and Bradley Trust. Venue is proper in this District pursuant to  
16 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c). Settling Defendants consent to and shall  
17 not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce  
18 this Consent Decree.

19 III. PARTIES BOUND

20 2. This Consent Decree applies to and is binding upon the United States, the Elem  
21 Tribe, and Settling Defendants and their respective successors and assigns. Any change in  
22 ownership or corporate status of Bradley Mining or Bradley Trust including, but not limited to,  
23 any transfer of assets or real or personal property, shall in no way alter that Defendant’s  
24 responsibilities under this Consent Decree.

25 IV. DEFINITIONS

26 3. Unless otherwise expressly provided herein, terms used in this Consent Decree  
27 that are defined in CERCLA or in regulations promulgated under CERCLA shall have the  
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1 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are  
 2 used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the  
 3 following definitions shall apply:

4 “Assigned” or “Assignment” or “Assignments” shall mean Defendants’ transfer of fee  
 5 title of the Assigned Property to the Redevelopment Trust.

6 “Assigned Property” shall mean the property in Lake County, California that is owned  
 7 by: (i) Bradley Trust and designated by the following property description:

8 (a) Lake County Assessor Parcel Nos. 010-002-33, 010-002-39, 010-002-57, 010-002-58,  
 9 and 010-002-81; and

10 (b) Lake County Assessor Parcel Nos. 010-029-24, 010-029-25, 010-002-32, and 010-  
 11 002-83; or

12 (ii) Bradley Mining and designated by the following property description: Lake County  
 13 Assessor Parcel Nos. 010-002-29 and 010-002-30.

14 “BIA Road 120” shall mean the geographic area contained in the grant of easement for a  
 15 right-of-way for a road over, across, in and upon lands located in Lake County, California, as  
 16 shown and delineated in the Right of Way Plats, Drawing No. 17-7-46, dated July 1970, and  
 17 Drawing No. 17-7-48, dated August 3, 1970, which are attached hereto as Appendix D.

18 “BLM” shall mean the United States Department of the Interior Bureau of Land  
 19 Management and any successor departments, agencies, or instrumentalities of the United States.

20 “Bradley Mining” shall mean the Bradley Mining Company, a California corporation.

21 “Bradley Mining Settling Defendants” shall mean the Bradley Mining Company, its  
 22 officers, directors, shareholders, successors, and assigns.

23 “Bradley Trust” shall mean Frederick Bradley, in his representative capacity as Trustee  
 24 of the Worthen Bradley Family Trust.

25 “Bradley Trust Settling Defendants” shall mean Frederick Bradley, in his representative  
 26 capacity as Trustee of the Worthen Bradley Family Trust, his successors, and assigns, and any  
 27 named beneficiaries of the Bradley Trust as of May 6, 2009, and their successors and assigns.  
 28

1 “Bretz Mine Site” shall mean the formerly active mercury mine located in Malheur  
2 County, Oregon, which includes Section 3, T.41 S., R.41 E., Willamette Meridian.

3 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and  
4 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601- 9675.

5 “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto  
6 (listed in Section XXII). In the event of conflict between this Decree and any appendix, this  
7 Decree shall control.

8 “Covered Parcels” shall mean Parcels 24, 25, 29, 30, 32, 33, 39, 57, 58, 81, and 83, and  
9 the Excised Lands when they are owned or controlled by the Redevelopment Trust.

10 “Covered Sites” shall mean the Sulphur Bank Site, the Mt. Diablo Mine Site, the Stibnite  
11 Mine Site, the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite  
12 Mine Site. Appendix A contains maps that generally depict the Covered Sites.

13 “Day” shall mean a calendar day unless expressly stated to be a working day. “Working  
14 day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any  
15 period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,  
16 or federal holiday, the period shall run until the close of business of the next working day.

17 “Defendants” shall mean the Bradley Mining Company, a California corporation, and  
18 Frederick Bradley, in his representative capacity as Trustee of the Worthen Bradley Family  
19 Trust.

20 “DOI” shall mean the United States Department of the Interior and any successor  
21 departments, agencies, or instrumentalities of the United States.

22 “DOJ” shall mean the United States Department of Justice and any successor  
23 departments, agencies, or instrumentalities of the United States.

24 “Effective Date” shall mean the date upon which this Consent Decree is entered by the  
25 Court.

26 “Elem Indian Colony” shall mean the geographic area contained in Lake County  
27 Assessor Parcel No. 010-002-20.  
28



1 “Elem Tribe” shall mean the Elem Indian Colony of Pomo Indians, a federally  
2 recognized Indian tribe.

3 “EPA” shall mean the United States Environmental Protection Agency and any successor  
4 departments, agencies, or instrumentalities of the United States.

5 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund  
6 established by the Internal Revenue Code, 26 U.S.C. § 9507.

7 “Excised Lands” shall be those areas of Parcels 33 and 57 that are not transferred by the  
8 Redevelopment Trust to the Elem Tribe due to the presence of hazardous substances as shown  
9 and delineated generally in the map attached hereto as Appendix E, and subject to modification  
10 based on the results of the environmental assessment to be performed under Paragraph 25 of this  
11 Consent Decree.

12 “Existing Contamination” shall mean any Waste Materials at the Sulphur Bank Site as of  
13 the Effective Date of this Consent Decree.

14 “Financial Information” shall mean those financial documents identified in Appendix C.

15 “Financial Security” shall mean the amount of financial assurances determined by EPA  
16 to ensure protection of the response measures taken at Parcel 25, Parcel 29, Parcel 30, Parcel 32,  
17 and the Excised Lands that will be required of the Redevelopment Trust if or when the  
18 Redevelopment Trust seeks an exception to the land/water use restrictions for Parcel 25, Parcel  
19 29, Parcel 30, Parcel 32, and the Excised Lands.

20 “Forest Service” shall mean the United States Department of Agriculture Forest Service  
21 and any successor departments, agencies, or instrumentalities of the United States.

22 “IMA Mine Site” shall mean the formerly active tungsten mine located in Lemhi County,  
23 Idaho, which includes Sections 13, 14, 15, 22, 23, 24, T.14 N., R.23 E., Boise Meridian.

24 “Institutional Controls” shall mean Proprietary Controls and state or local laws,  
25 regulations, ordinances, zoning restrictions, or other governmental controls or notices that:

26 (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste  
27 Materials at the Covered Sites; (b) limit land, water, and/or resource use to implement, ensure  
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1 non-interference with, or ensure the protectiveness of the remedial action at the Covered Sites;  
2 and/or (c) provide information intended to modify or guide human behavior at the Covered Sites.

3 “Insurance Proceeds” shall mean the total amount of all insurance proceeds received by  
4 Bradley Mining in any settlements or paid by its insurers in the negotiations conducted pursuant  
5 to Paragraph 9.

6 “Interest” shall mean interest at the rate specified for interest on investments of the EPA  
7 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on  
8 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest  
9 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change  
10 on October 1 of each year.

11 “Mt. Diablo Mine Site,” also known as the Marsh Creek Road Abandoned Dump Site,  
12 shall mean the formerly active Mt. Diablo mercury mine located in Contra Costa County at 2430  
13 Morgan Territory Road in Clayton, California, including portions of Contra Costa County  
14 Assessor’s Parcel Nos. 078-060-034, 078-070-034, and 078-070-036.

15 “Net Lease Proceeds” shall mean the total value of all consideration received by the  
16 Redevelopment Trust from the lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised  
17 Lands, less fees and expenses as set forth in the Redevelopment Trust Agreement.

18 “Net Sales Proceeds” shall mean the total value of all consideration received by the  
19 Redevelopment Trust from the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands,  
20 less fees and expenses as set forth in the Redevelopment Trust Agreement.

21 “Opalite Mine Site” shall mean the formerly active mercury mine located in Malheur  
22 County, Oregon, which includes portions of Section 33, T.40 S., R.40 E., Willamette Meridian.

23 “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic  
24 numeral.

25 “Parcel 24” shall mean Lake County Assessor Parcel No. 010-029-24.

26 “Parcel 25” shall mean Lake County Assessor Parcel No. 010-029-25.

27 “Parcel 28” shall mean Lake County Assessor Parcel No. 010-002-28.  
28

1 “Parcel 29” shall mean Lake County Assessor Parcel No. 010-002-29.

2 “Parcel 30” shall mean Lake County Assessor Parcel No. 010-002-30.

3 “Parcel 32” shall mean Lake County Assessor Parcel No. 010-002-32.

4 “Parcel 33” shall mean Lake County Assessor Parcel No. 010-002-33.

5 “Parcel 39” shall mean Lake County Assessor Parcel No. 010-002-39.

6 “Parcel 57” shall mean Lake County Assessor Parcel No. 010-002-57.

7 “Parcel 58” shall mean Lake County Assessor Parcel No. 010-002-58.

8 “Parcel 81” shall mean Lake County Assessor Parcel No. 010-002-81.

9 “Parcel 82” shall mean Lake County Assessor Parcel No. 010-002-82.

10 “Parcel 83” shall mean Lake County Assessor Parcel No. 010-002-83.

11 Appendix B contains a map generally depicting Parcels 24, 25, 28, 29, 30, 32, 33, 39, 57, 58, 81,  
12 82, and 83 as they are currently configured.

13 “Parties” shall mean the United States, the Elem Tribe, and Settling Defendants.

14 “Plaintiff” shall mean the United States.

15 “Proprietary Controls” shall mean easements or covenants running with the land that  
16 (a) limit land, water or resource use and/or provide access rights, and (b) are created pursuant to  
17 common law or statutory law by an instrument that is recorded by the owner in the appropriate  
18 land records office.

19 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 -  
20 6992k (also known as the Resource Conservation and Recovery Act).

21 “Redevelopment Trust” shall mean the private trust, having the United States and the  
22 Elem Tribe as its named beneficiaries, that will be established pursuant to Section VIII  
23 (Redevelopment Trust; Defendants’ Assignment of Property) of this Decree for the ownership,  
24 management or control of the Assigned Property.

25 “Response Action Systems” mean any and all equipment and systems located on the  
26 Sulphur Bank Site as well as devices that may be installed in the future to carry out CERCLA  
27 response actions on the Sulphur Bank Site, including, but not limited to, a water treatment plant,  
28

1 soil covers, cap systems, revegetated covers, surface water controls, groundwater interception  
2 and diversion systems, groundwater monitoring wells, groundwater extraction wells, engineering  
3 controls (including, but not limited to, fences and gates), and associated infrastructure such as  
4 roadways, piping, power lines, and other utilities.

5 “Restricted Areas of Parcel 25” shall mean the contaminated portion of Parcel 25 as  
6 generally depicted in Appendix I and as referenced in Paragraph 62.

7 “Restricted Areas of Parcel 32” shall mean the contaminated portion of Parcel 32 as  
8 generally depicted in Appendix J and as referenced in Paragraph 62.

9 “Retained Lands” shall mean the property in Lake County, California that is owned by  
10 Bradley Trust and designated by the following property description: Lake County Assessor  
11 Parcel Nos. 010-002-28 and 010-002-82. The Retained Lands are not part of the Sulphur Bank  
12 Site;

13 “Section” shall mean a portion of this Consent Decree identified by an upper case Roman  
14 numeral.

15 “Settling Defendants” shall mean the Bradley Mining Settling Defendants and the  
16 Bradley Trust Settling Defendants.

17 “Settling Federal Agencies” shall mean the United States Department of Agriculture, the  
18 United States Department of Defense, the United States Department of the Interior, the United  
19 States Environmental Protection Agency, and the United States General Services Administration,  
20 which are resolving counterclaims that have been or could be asserted against them with regard  
21 to the Sulphur Bank Site and/or the Stibnite Mine Site, and claims that have been or could be  
22 asserted against them with regard to the Elem Tribe CERCLA case, as provided in this Consent  
23 Decree, as well as any other department, agency, and instrumentality of the United States against  
24 whom claims for cost recovery, natural resources damages, or contribution under CERCLA  
25 could be asserted with regard to the Sulphur Bank Site and/or the Stibnite Mine Site.

26 “Springfield Mine Site” shall mean the Springfield Scheelite Mine Site located on the  
27 Big Chief and Springfield Creeks in Valley County, Idaho, including portions of Section 28,  
28

1 T.17 N., R.9 E., Boise Meridian.

2 “Stibnite Mine Site” shall mean the Stibnite Mine Site in Valley County, Idaho, including  
3 portions of Sections 2, 3, 10, 11, 14, 15, 16, 21, 22 & 27, T.18 N., R.9 E., Boise Meridian, and  
4 Sections 34 & 35, T.19 N., R.9 E., Boise Meridian.

5 “Sulphur Bank Site” shall mean the Sulphur Bank Mercury Mine Superfund Site in Lake  
6 County, California, which includes all or portions of Lake County Assessor’s Parcel Nos.  
7 010-002-20 (the Elem Indian Colony), 010-029-25, 010-002-29, 010-002-30, 010-002-32,  
8 010-002-33, 010-002-57, and 010-002-58, Clear Lake, and BIA Road 120.

9 “Total Income” shall mean Bradley Mining’s income as reported to the Internal Revenue  
10 Service as Total Income on line 11 of its U.S. Corporation Income Tax Return, Internal Revenue  
11 Service Form 1120 (2009 form), or the equivalent line of any future U.S. Corporation Income  
12 Tax Return form. For purposes of this Consent Decree, Total Income for any year shall not  
13 include payments of insurance proceeds pursuant to Paragraphs 8 and 9 of this Decree that were  
14 received by Bradley Mining in that year.

15 “United States” shall mean the United States of America, including its departments,  
16 agencies, and instrumentalities, which includes without limitation EPA, the Forest Service,  
17 BLM, and the Settling Federal Agencies.

18 “Waste Materials” shall mean: (i) any “hazardous substance” under Section 101(14) of  
19 CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of  
20 CERCLA, 42 U.S.C. § 9601(33); (iii) any “solid waste” under Section 1004(27) of RCRA, 42  
21 U.S.C. § 6903(27); and (iv) any “hazardous substance” under California Health and Safety Code  
22 §§ 25316, 25317.

## 23 V. GENERAL PROVISIONS

24 4. Objectives of the Parties. By entering into this Consent Decree, the mutual  
25 objectives of the Parties, as more precisely described in the terms of this Consent Decree, are:

26 a. To reach a settlement among the Parties with respect to the Covered Sites  
27 that requires: (i) Bradley Mining to Assign certain parcels of property to the Redevelopment  
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Trust for the benefit of the United States; (ii) Bradley Mining to make cash payments from the proceeds of insurance claims and annual payments of a percentage of its Total Income to the United States; (iii) Bradley Trust to Assign certain parcels of property to the Redevelopment Trust for the benefit of the United States; and (iv) Bradley Trust to Assign certain parcels of property to the Redevelopment Trust for the benefit of the Elem Tribe;

b. To resolve the claims of Plaintiff against Defendants for their alleged liability for the Covered Sites, as provided in Section XI (Covenants by Plaintiff, Settling Federal Agencies, and the Elem Tribe) and Section XII (Plaintiff's Reservation of Rights) of this Decree;

c. To resolve any claims of the Elem Tribe that have been or could have been asserted against the United States or the Settling Defendants with regard to the Sulphur Bank Site, as provided in Section XI (Covenants by Plaintiff, Settling Federal Agencies, and the Elem Tribe) of this Decree;

d. To resolve any claims of Settling Defendants that have been or could have been asserted against the United States or the Elem Tribe with regard to the Covered Sites, as provided in Section XIII (Covenants Not to Sue by Settling Defendants) of this Decree; and

e. To provide for contribution protection for the Bradley Mining Settling Defendants, the Bradley Trust Settling Defendants, the Settling Federal Agencies, and the Redevelopment Trust with respect to matters addressed in this Consent Decree pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

5. Several Commitments by Bradley Mining, Bradley Trust, and DOI.

a. During any time after the Effective Date of this Consent Decree that a Defendant owns or controls the Covered Sites or any portion thereof, that Defendant shall:

1. comply with any Institutional Controls set forth in any current or future Record of Decision for the Covered Sites on its respective owned or controlled portion of the Covered Sites; and

2. cooperate with EPA, the Forest Service, and BLM during the

1 implementation of all or any portion of CERCLA response actions at the Covered Sites carried  
2 out by, or under the oversight of, EPA, the Forest Service, and BLM.

3 b. DOI agrees to comply with substantive Institutional Controls and land-use  
4 restrictions set forth in an EPA-issued Action Memorandum or Record of Decision for BIA Road  
5 120, to the extent that such restrictions are consistent with the Federal Property and  
6 Administrative Services Act of 1949, 40 U.S.C. § 471, and article IV of the U.S. Constitution.

#### 7 VI. STIPULATED JUDGMENT

8 6. Bradley Mining stipulates that judgment shall be hereby entered against it and in  
9 favor of Plaintiff in the amount of \$104,774,423 on the United States' claims under Section 107  
10 of CERCLA, 42 U.S.C. § 9607, for recovery of response costs incurred or to be incurred by the  
11 United States in connection with releases or threatened releases of hazardous substances at the  
12 Covered Sites. Although Plaintiff may file this judgment as and where necessary to preserve  
13 secured creditor status in favor of Plaintiff, Bradley Mining acknowledges that such filing is not  
14 a condition precedent to Plaintiff's secured creditor status. This judgment shall remain in effect  
15 until Bradley Mining has complied with all requirements in this Paragraph. Such judgment shall  
16 be satisfied solely (i) through recovery of insurance proceeds from any insurance policies held  
17 by Bradley Mining in accordance with Paragraphs 8 and 9, (ii) by Bradley Mining's annual  
18 payments of a percentage of its Total Income in accordance with Paragraph 12, and (iii) by  
19 Bradley Mining's conveyance to the Redevelopment Trust, in accordance with Paragraph 19, of  
20 Parcels 29 and 30 and any other property rights it has with respect to Parcels 24, 25, 32, 33, 39,  
21 57, 58, 81, and 83. Any cash payments made by Bradley Mining pursuant to this Consent  
22 Decree and any payments of Net Sales Proceeds and Net Lease Proceeds by the Redevelopment  
23 Trust shall, in the aggregate, not exceed the judgment amount. Upon approval and entry, this  
24 Consent Decree shall constitute the final judgment for resolution of the United States' claims  
25 against Bradley Mining, and no other form of judgment shall be required.

#### 26 VII. PAYMENTS BY DEFENDANTS AND SETTLING FEDERAL AGENCIES

27 7. Payments to Elem Tribe. As additional consideration for the Elem Tribe's  
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1 Covenant Not to Sue in favor of the Settling Defendants as set forth in Paragraph 43 of the  
2 Consent Decree, and conditioned upon the Court's entry of the Consent Decree, Bradley Mining  
3 and Bradley Trust shall pay a total of fifty thousand dollars (\$50,000) to the Elem Tribe as  
4 reimbursement of the Elem Tribe's assessment and restoration costs related to Parcels 33, 39, 57,  
5 58, and 81 as follows:

6           a.       After the Effective Date of this Consent Decree and within two weeks  
7 after Bradley Mining receives any settlement payment from Century Indemnity for the Covered  
8 Sites, as described in Paragraph 8 below, Bradley Mining shall pay \$25,000 of the \$50,000  
9 additional consideration described in this Paragraph to the Elem Tribe. The Parties to this  
10 Consent Decree recognize and acknowledge that the payment obligations of Bradley Mining  
11 relating to insurance recoveries under this Consent Decree can only be paid if the insurance  
12 companies actually make the payments; and

13           b.       No later than one year after the Effective Date of the Consent Decree or  
14 within two weeks after Bradley Trust receives payment for its sale of either or both of the  
15 Retained Lands, whichever comes first, Bradley Trust shall pay the remaining \$25,000 of the  
16 \$50,000 additional consideration described in this Paragraph to the Elem Tribe in full  
17 satisfaction of the obligation of Bradley Mining and Bradley Trust to pay the additional  
18 consideration amount. In the event that Bradley Mining does not make the initial \$25,000  
19 payment because the insurance payment is not received as anticipated in subparagraph a., then  
20 Bradley Trust or Bradley Mining shall pay the entire \$50,000 to the Elem Tribe no later than one  
21 year after the Effective Date of the Consent Decree or within two weeks after Bradley Trust  
22 receives payment for its sale of either or both of the Retained Lands, whichever comes first.

23           c.       Payments by Defendants to the Elem Tribe as described in this Paragraph  
24 shall be made according to written instructions that the Elem Tribe will provide to Bradley  
25 Mining and Bradley Trust within one week after the Effective Date of this Consent Decree.

26           d.       To insure the payment of such additional consideration described in  
27 Paragraph 7.a. and b., Bradley Mining and Bradley Trust consent to the Elem Tribe placing a  
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1 lien, which shall be in the form attached to this Consent Decree as Appendix K, onto the title of  
2 the Retained Lands for the remaining amount outstanding, if any. If the Elem Tribe does place  
3 such a lien onto the title of the Retained Lands as provided herein, the Elem Tribe agrees to  
4 unconditionally release that lien within one week of the payment of the additional consideration.  
5 In the event that Bradley Trust and Bradley Mining do not pay all of the additional consideration  
6 described in Paragraph 7, the Elem Tribe shall be entitled to recover Interest on any unpaid  
7 amount and its reasonable attorneys fees incurred in executing against the lien to recover such  
8 unpaid amount; provided, however, that if the additional consideration is paid as described in  
9 Paragraph 7, and the Elem Tribe does not release any lien it placed onto the Retained Lands,  
10 then Bradley Trust and Bradley Mining shall be entitled to recover their reasonable attorneys  
11 fees incurred relating to removal of the lien.

12 8. Settled Insurance Claim. Within 10 days after the lodging of this Consent Decree,  
13 Bradley Mining shall deposit \$530,000, which are the proceeds from a settlement payment  
14 received from Century Indemnity for the Covered Sites, into an escrow account, bearing interest  
15 on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). The  
16 monies placed in escrow, together with accrued interest thereon, shall be returned to Bradley  
17 Mining if either: (i) the United States does not move to enter the Consent Decree after review of  
18 public comments; or (ii) the United States moves to enter the Consent Decree and the Decree is  
19 not entered by the Court, and (a) the time for any appeal of that decision has run or (b) the  
20 Court's denial of entry is upheld on appeal. If the Consent Decree is entered by the Court,  
21 Bradley Mining shall: (1) be entitled to receive and retain \$25,000 of the insurance proceeds in  
22 the Escrow Account to transfer to the Elem Tribe; (2) within 15 days after the Effective Date of  
23 this Consent Decree, cause the monies in the Escrow Account, minus the \$25,000 to be retained  
24 by Bradley Mining and \$126,250 plus accrued interest to be paid to the Redevelopment Trust, to  
25 be paid to the United States in accordance with Paragraphs 11 and 13 below; and (3) within 30  
26 days after the Effective Date of this Consent Decree, cause the remaining monies in the Escrow  
27 Account (\$126,250 plus accrued interest) to be paid to the Redevelopment Trust in accordance  
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1 with Paragraph 19. The Parties to this Consent Decree recognize and acknowledge that the  
2 payment obligations of Bradley Mining relating to insurance recoveries under this Consent  
3 Decree can only be paid if the insurance companies actually make the payments.

4 9. Other Insurance Claims. To satisfy the foregoing judgment in Paragraph 6,  
5 Bradley Mining agrees, pursuant to this Paragraph, to pursue in good faith and to final judgment  
6 or settlement any available indemnification or recovery from all applicable insurance policies  
7 held by Bradley Mining relating to the Covered Sites. Bradley Mining agrees to reasonably  
8 cooperate with and assist the United States in (i) asserting and pursuing claims for coverage  
9 under those policies, and (ii) negotiating or litigating the most favorable resolution of those  
10 claims under those policies. The United States will provide assistance with respect to  
11 negotiations with Bradley Mining's insurers by providing documentation of response costs  
12 incurred in connection with the Covered Sites and assisting in responses to other information  
13 requests from the insurers. All insurance proceeds recovered by Bradley Mining by negotiation,  
14 litigation or payment by its insurers pursuant to this Paragraph shall constitute "Insurance  
15 Proceeds" and shall be allocated in the appropriate percentages set forth in Paragraph 10.

16 10. Eighty percent of the first one hundred thousand dollars (\$100,000) of any  
17 Insurance Proceeds received by Bradley Mining from its insurance policies pursuant to  
18 Paragraph 9 shall be paid to the United States and the remaining twenty percent shall be paid to  
19 Bradley Mining. For any Insurance Proceeds received by Bradley Mining from its insurance  
20 policies pursuant to Paragraph 9 in excess of \$100,000, the United States shall be paid ninety-  
21 five percent and the remaining five percent shall be paid to Bradley Mining. Bradley Mining  
22 shall request its insurers to have all Insurance Proceeds paid into an Escrow Account, bearing  
23 interest on commercially reasonable terms, in a federally-chartered bank. Within 30 Days of  
24 Insurance Proceeds under Paragraph 9 becoming available, Bradley Mining shall cause the  
25 monies in the Escrow Account, including the accrued interest, to be paid in the appropriate  
26 percentages set forth in this Paragraph to: (i) the United States, in accordance with the  
27 procedures specified below in Paragraphs 11 and 13, and (ii) Bradley Mining. If it is not  
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1 practicable for the insurers to pay an Escrow Account directly, then Bradley Mining, in  
 2 accordance with the procedures specified below in Paragraphs 11 and 13, shall forward the  
 3 United States' share to the United States within thirty days of receiving the Insurance Proceeds.  
 4 The Parties to this Consent Decree recognize and acknowledge that the payment obligations of  
 5 Bradley Mining relating to insurance recoveries under this Consent Decree can only be paid if  
 6 the insurance companies actually make the payments.

7       11. Payment to the United States pursuant to Paragraphs 8 and 10, whether by  
 8 Bradley Mining, its insurers, or an escrow agent, shall be made by FedWire Electronic Funds  
 9 Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT  
 10 procedures, referencing DOJ Case Numbers 90-11-3-07593 and 90-11-3-06069/4. Payment  
 11 shall be made in accordance with instructions provided to Bradley Mining by the Financial  
 12 Litigation Unit of the U.S. Attorney's Office in the Northern District of California following  
 13 lodging of the Consent Decree. After payment to the United States pursuant to Paragraph 8, the  
 14 U.S. Department of Justice shall distribute an allocated share of such proceeds as follows:  
 15 \$50,500 shall reference the Mt. Diablo Mine Site Special Account (Marsh Creek Road  
 16 Abandoned Dump Site, Site ID 09RX ), \$74,588 shall reference the EPA Hazardous Substance  
 17 Superfund (13.4 percent of Stibnite Mine Site, Site ID 10Q7, Opalite Mine Site, and 14.2 percent  
 18 of Bretz Mine Site), \$159,833 shall reference Forest Service Region 4, Bradley Mining  
 19 settlement, Attn: K. Zamba (86.6 percent of Stibnite Mine Site and Springfield Mine Site), and  
 20 \$93,829 shall reference the DOI Central Hazardous Materials Fund, ALC 14010001, Account  
 21 Number 14X1121 (CHF) (to BLM for IMA Mine Site and 85.8 percent of Bretz Mine Site).  
 22 After payment to the United States pursuant to Paragraph 10, the U.S. Department of Justice  
 23 shall distribute an allocated share of such proceeds as follows: 25 percent shall reference  
 24 Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site), 10  
 25 percent shall reference shall reference the Mt. Diablo Mine Site Special Account (Marsh Creek  
 26 Road Abandoned Dump Site, Site ID 09RX ), 14.77 percent shall reference the EPA Hazardous  
 27 Substance Superfund (13.4 percent of Stibnite Mine Site, Site ID 10Q7, Opalite Mine Site, and  
 28

14.2 percent of Bretz Mine Site), 31.65 percent plus any accrued interest shall reference Forest Service Region 4, Bradley Mining settlement, Attn: K. Zamba (86.6 percent of Stibnite Mine Site and Springfield Mine Site), and 18.58 percent shall reference the DOI Central Hazardous Materials Fund, ALC 14010001, Account Number 14X1121 (CHF) (to BLM for IMA Mine Site and 85.8 percent of Bretz Mine Site).

12. Annual Payment of Percentage of Total Income. In addition to the payments required by Paragraphs 8 and 10, Bradley Mining shall, on an annual basis beginning with the Total Income in calendar year 2011, pay the United States an amount equal to a fixed percent of Bradley Mining's Total Income. Bradley Mining shall calculate its annual payment based on the amount of its Total Income, as provided in the following table:

<u>Bradley Mining's Total Income</u>	<u>Annual Payment to United States</u>
0 - \$100,000	8.5 percent of that amount
\$100,001 - \$200,000	25 percent of that amount
over \$200,000	60 percent of that amount

Thus, for example, if Bradley Mining reports Total Income of \$300,000, it shall pay the United States \$93,500 as follows: 8.5 percent of the first \$100,000 (\$8,500), plus 25 percent of the next \$100,00 (\$25,000), and 60 percent of the amount over \$200,000 (\$60,000). Bradley Mining shall make each annual payment no later than 30 business days after it is required to file its annual federal tax return, and shall concurrently provide a copy of its filed tax return to the United States, EPA Region IX, and EPA Region X as provided in Section XIX (Notices and Submissions) of this Decree. Bradley Mining's annual payment pursuant to this Paragraph shall be made by EFT to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Numbers 90-11-3-07593 and 90-11-3-06069/4. Payment shall be made in accordance with instructions provided to Bradley Mining by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of California following lodging of the Consent Decree. The U.S. Department of Justice shall distribute an allocated share as follows: 25 percent shall reference Site/Spill Special Account Number 2009 TR2B

09K0XK2 302DD2 (Sulphur Bank Site), 10 percent shall reference the Mt. Diablo Mine Site Special Account (Marsh Creek Road Abandoned Dump Site, Site ID 09RX ), 14.77 percent shall reference the EPA Hazardous Substance Superfund (13.4 percent of Stibnite Mine Site, Site ID 10Q7, Opalite Mine Site, and 14.2 percent of Bretz Mine Site), 31.65 percent shall reference Forest Service Region 4, Bradley Mining settlement, Attn: K. Zamba (86.6 percent of Stibnite Mine Site and Springfield Mine Site), and 18.58 percent shall reference the DOI Central Hazardous Materials Fund, ALC 14010001, Account Number 14X1121 (CHF) (to BLM for IMA Mine Site and 85.8 percent of Bretz Mine Site).

13. At the time of payment under Paragraphs 11 and 12, Defendants shall send a letter confirming the date and reference number of the FedWire EFT to the United States, EPA Region IX, EPA Region X, the Regional Financial Management Officers, the Forest Service, and BLM, as provided in Section XIX (Notices and Submissions) of this Decree.

14. Special Accounts and EPA Hazardous Substance Superfund.

a. For the Sulphur Bank Site, the total amount to be paid to EPA pursuant to Paragraphs 11 and 12 of this Consent Decree shall be deposited by EPA into the Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2 within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Sulphur Bank Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. For the Mt. Diablo Mine Site, the total amount to be paid to EPA pursuant to Paragraphs 11 and 12 of this Consent Decree shall be deposited by EPA into the Mt. Diablo Mine Site Special Account (Marsh Creek Road Abandoned Dump Site, Site ID 09RX) within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Mt. Diablo Mine Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

c. For the Stibnite Mine Site (Site ID 10Q7), Opalite Mine Site, and the Bretz Mine Site, the total amount to be paid to EPA pursuant to Paragraphs 11 and 12 of this Consent Decree shall be deposited by EPA into the EPA Hazardous Substance Superfund.

1           d.       For the Stibnite Mine Site and the Springfield Mine Site, the total amount  
2 to be paid to the Forest Service pursuant to Paragraphs 11 and 12 of this Consent Decree shall be  
3 deposited into the Forest Service Region 4, Bradley Mining settlement account (Attn: K.  
4 Zamba).

5           e.       For the IMA Mine Site and Bretz Mine Site, the total amount to be paid to  
6 BLM pursuant to Paragraphs 11 and 12 of this Consent Decree shall be deposited in the DOI  
7 Central Hazardous Materials Fund, ALC 14010001, Account Number 14X1121 (CHF),  
8 NBC/Division of Financial Management Services, Branch of Accounting Operations, Mail Stop  
9 D-2777, 7401 West Mansfield Avenue, Lakewood, Colorado 80235.

10       15.       As soon as reasonably practicable after the Effective Date of this Consent Decree,  
11 and consistent with Paragraph 15.b., the United States, on behalf of the Settling Federal  
12 Agencies, shall:

13           a.       Pay \$7,200,588 to EPA. The total amount to be paid by the United States  
14 on behalf of the Settling Federal Agencies shall be deposited into the Site/Spill Special Account  
15 Number 2009 TR2B 09K0XK2 302DD2 within the EPA Hazardous Substance Superfund to be  
16 retained and used to conduct or finance response actions at or in connection with the Sulphur  
17 Bank Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. At the time  
18 of payment, the United States, on behalf of the Settling Federal Agencies, shall send a letter  
19 confirming the date and reference number of the payment to the United States, EPA Region IX,  
20 and the Regional Financial Management Officers as provided in Section XIX (Notices and  
21 Submissions) of this Decree, and shall reference DOJ Case Number 90-11-3-07593 and  
22 Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2.

23           b.       If the payment to EPA required by Paragraph 15.a. is not made as soon as  
24 reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating  
25 to payment to the appropriate DOJ Assistant Chief for the Environmental Defense Section. In  
26 any event, if this payment is not made within 120 days after the date of the Effective Date of this  
27 Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance  
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1 with a letter agreement dated December 28, 1998.

2 16. The Parties to this Consent Decree recognize and acknowledge that the payment  
3 obligations of the Settling Federal Agencies under this Consent Decree can only be paid from  
4 appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be  
5 interpreted or construed as a commitment or requirement that any Settling Federal Agency  
6 obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any  
7 other applicable provision of law.

8 VIII. REDEVELOPMENT TRUST; DEFENDANTS' ASSIGNMENT OF PROPERTY

9 17. The Redevelopment Trust shall be established in accordance with this Section  
10 VIII. The purpose of the Redevelopment Trust is to act for the benefit of the United States and  
11 the Elem Tribe by: (i) receiving and holding title to Parcels 24, 25, 29, 30, 32, and 83, and the  
12 Excised Lands, with the primary objective of managing the parcels consistent with EPA's long-  
13 term remedial objectives for the Sulphur Bank Site and, after consulting with EPA and in  
14 accordance with EPA's written instructions, to take further actions regarding all or a portion of  
15 the parcels, such as, but not limited to, selling, leasing, developing, transferring or holding in  
16 trust for a new beneficiary in accordance with the requirements of this Consent Decree;  
17 (ii) receiving and holding title to Parcels 33, 39, 57, 58, and 81 until the parcels are transferred in  
18 fee to the Elem Tribe without the Excised Lands; (iii) cooperating fully with EPA in the  
19 implementation of response actions at the Sulphur Bank Site and not interfering with such  
20 response actions, and providing access to the Sulphur Bank Site as set forth in Section XV  
21 (Access and Institutional Controls) of the Consent Decree; (iv) subject to EPA's approval,  
22 marketing Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, for sale, lease, and  
23 redevelopment; (v) subject to EPA's approval, maximizing the proceeds of the sale of Parcels  
24 24, 25, 29, 30, 32, and 83, and the Excised Lands; (vi) disbursing the Net Sale Proceeds and Net  
25 Lease Proceeds from Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, and assets of the  
26 Redevelopment Trust in accordance with applicable provisions of this Consent Decree and the  
27 Redevelopment Trust Agreement; and (vii) providing annual accounting to EPA Region IX until  
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1 Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands are sold and thereafter providing a final  
2 accounting to EPA Region IX of all earnings, income, and disbursements from the estate of the  
3 Redevelopment Trust. Defendants shall cooperate fully in the establishment of the  
4 Redevelopment Trust, and provide such information as the Trustee may reasonably require, such  
5 as for tax accounting, to carry out the obligations of the Redevelopment Trust.

6 18. Within 15 Days after the Effective Date of this Consent Decree, Defendants shall  
7 submit to EPA a fully executed Redevelopment Trust Agreement, which shall be in the form  
8 attached to this Consent Decree as Appendix F. If EPA determines that the Redevelopment  
9 Trust Agreement needs to be amended to conform to the requirements of this Consent Decree or  
10 to effectuate the purposes of the Trust, Defendants shall cooperate fully in the amendment of the  
11 Redevelopment Trust Agreement and their agreement to amend the Agreement shall not be  
12 unreasonably withheld. As to Parcels 33, 39, 57, 58, and 81, however, the Redevelopment Trust  
13 may be modified to effectuate the purposes of the Trust only by joint written consent of EPA and  
14 the Elem Tribe and by Order of this Court, and only to the extent that such modification does not  
15 change or inhibit the purpose of the Redevelopment Trust respecting these Parcels or allow for  
16 distributions of these Parcels to any entity that is not a qualified organization under the terms of  
17 the Redevelopment Trust.

18 19. Within 30 Days after the Effective Date of this Consent Decree, (i) Bradley  
19 Mining shall convey to the Redevelopment Trust Parcels 29 and 30 free and clear of any  
20 encumbrances (including, but not limited to, leases or other agreements related to tenancy) other  
21 than those identified in Appendix H; (ii) Bradley Mining shall convey to the Redevelopment  
22 Trust any other property rights it has with respect to Parcels 24, 25, 32, 33, 39, 57, 58, 81, and  
23 83; (iii) Bradley Trust shall convey to the Redevelopment Trust Parcels 24, 25, 32, 33, 39, 57,  
24 58, 81, and 83 free and clear of any encumbrances (including, but not limited to, leases or other  
25 agreements related to tenancy) other than those identified in Appendix H; and (iv) subject to  
26 recovery from its insurer pursuant to Paragraph 8, Bradley Mining shall pay \$126,250 plus  
27 accrued interest, if any, to the Redevelopment Trust for the payment of expenses associated with  
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both the ownership, marketing, and sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, and the ownership of Parcels 33, 39, 57, 58, and 81 until they are transferred to the Elem Tribe. Defendants shall have no further obligations or liabilities regarding Parcels 24, 25, 29, 30, 32, 33, 39, 57, 58, 81, and 83.

20. The money paid into the Redevelopment Trust, and all earnings thereon, shall be used solely for the purposes provided in this Consent Decree including, without limitation, paying the expenses of administering the trust and maximizing the net proceeds of the sale or lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, with any unused funds, less the Trustee's fees, returned to the United States following the sale and conveyance of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands.

21. Assignment of Property.

a. Each Assigned Property, as defined in this Consent Decree, shall be Assigned:

1. in fee simple title with all associated surface and mineral rights of the Assigned Property;

2. via a grant deed in substantially the form attached hereto as Appendix G that is enforceable under the laws of the State of California;

3. free of all existing third party agreements, licenses, easements, leases or similar instruments other than those identified in Appendix H; and

4. preceded by a current title insurance commitment or some other evidence of title acceptable to the United States and the Elem Tribe, which shows title to the Assigned Property to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by the United States and the Elem Tribe).

b. The United States will pay the cost of any title reports and title insurance for the Assigned Property.

c. Until Assignment of their property pursuant to this Section VIII, each Defendant, for its respectively owned properties:

1                   1.       shall be solely responsible for paying any and all associated taxes,  
2 including, but not limited to, real property taxes and real estate transfer taxes;

3                   2.       shall keep the property insured against loss from casualty and  
4 liability;

5                   3.       shall refrain from any act(s) that would defeat, diminish, or  
6 otherwise impair the Redevelopment Trust's or the Elem Tribe's future interest(s) in fee title to  
7 the property; and

8                   4.       shall cooperate with EPA with regard to cleanup actions and all  
9 Institutional Controls on the property.

10           22.     The Redevelopment Trust shall have the following obligations:

11                   a.       To receive, hold, manage, and maintain Parcels 24, 25, 29, 30, 32, and 83,  
12 and the Excised Lands, with the primary objective of managing the parcels consistent with  
13 EPA's long-term remedial objectives for the Sulphur Bank Site and, after consulting with EPA  
14 and in accordance with EPA's written instructions, to take further actions regarding all or a  
15 portion of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, such as, but not limited to,  
16 selling, leasing, developing, transferring or holding in trust for a new beneficiary in accordance  
17 with the requirements of this Consent Decree;

18                   b.       To receive, hold, manage, and maintain Parcels 33 and 57 until: (i) the  
19 Excised Lands are appended to Parcels 29 and 30; and (ii) the Redevelopment Trust is instructed  
20 in writing by the Elem Tribe to transfer the newly reconfigured Parcels 33 and 57 to the Elem  
21 Tribe or to another trust or entity identified by the Elem Tribe; provided, however, that the Elem  
22 Tribe will use its best efforts to accomplish transfers of Parcels 33 and 57 from the  
23 Redevelopment Trust to the Elem Tribe or to another trust or entity identified by the Elem Tribe  
24 by no later than one year after the Effective Date of this Consent Decree, unless the United  
25 States and the Elem Tribe mutually agree to extend this period;

26                   c.       To receive, hold, manage, and maintain Parcels 39, 58, and 81 until the  
27 Redevelopment Trust is instructed in writing by the Elem Tribe to transfer Parcels 39, 58, and 81  
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1 to the Elem Tribe or to another trust or entity identified by the Elem Tribe; provided, however,  
2 that the Elem Tribe will use its best efforts to accomplish transfers of Parcels 39, 58, and 81 from  
3 the Redevelopment Trust to the Elem Tribe or to another trust or entity identified by the Elem  
4 Tribe by no later than one year after the Effective Date of this Consent Decree, unless the United  
5 States and the Elem Tribe mutually agree to extend this period;

6 d. To exercise due care at Parcels 25, 29, 30, and 32, including the Excised  
7 Lands, with respect to Existing Contamination, to comply with all applicable local, State, and  
8 federal law and regulations, to cooperate fully with EPA in the implementation of response  
9 actions at the Sulphur Bank Site and not interfere with such response actions, to comply with all  
10 restrictions required by EPA, to record any Proprietary Controls at the request and direction of  
11 EPA prior to transferring any of these parcels, and to provide access to the parcels as set forth in  
12 Section XV (Access and Institutional Controls) of this Decree;

13 e. To deposit, manage, and invest the funds paid into the Redevelopment  
14 Trust, and to disburse funds from such account(s) for the purposes set forth in this Consent  
15 Decree;

16 f. To pay all applicable real estate and transfer taxes on the Covered Parcels,  
17 file all applicable federal and state tax returns, and pay all applicable federal and state taxes  
18 associated with the Trust and the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised  
19 Lands;

20 g. Subject to EPA's approval, to locate purchasers or lessees who will  
21 provide maximum value for, and will substantially reuse Parcels 24, 25, 29, 30, 32, and 83, and  
22 the Excised Lands, consistent with applicable zoning and other valid land use ordinance and  
23 regulations, to negotiate the terms of the sale and transfer or lease of the parcels, and to sell and  
24 convey or lease the parcels;

25 h. Subject to EPA's approval, to retain a commercial real estate broker on  
26 customary and reasonable terms to assist in the marketing and sale or lease of Parcels 24, 25, 29,  
27 30, 32, and 83, and the Excised Lands;

1 i. Consistent with the fundamental purposes of the Redevelopment Trust as  
2 set forth above in subparagraph a. and other applicable requirements of the Consent Decree, and  
3 subject to the approval of EPA, to take whatever actions at whatever times are commercially  
4 reasonable to maximize the net proceeds of the sale or lease of Parcels 24, 25, 29, 30, 32, and 83,  
5 and the Excised Lands;

6 j. To distribute the assets of the Redevelopment Trust following the sale or  
7 lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, in accordance with Paragraph  
8 23;

9 k. To provide EPA Region IX an accounting on an annual basis, and a final  
10 accounting within 30 days after the sale or conveyance of Parcels 24, 25, 29, 30, 32, and 83, and  
11 the Excised Lands, of all Redevelopment Trust assets, earnings, and disbursements;

12 l. To employ all reasonable measures to prevent unauthorized entry upon or  
13 use of the property in its possession or control and to provide for site maintenance and utilities, if  
14 any;

15 m. To insure the Redevelopment Trust's property against loss due to casualty  
16 or third party liability; and

17 n. To comply with all relevant Sections of the Consent Decree, and EPA  
18 shall have the right and power to compel the Redevelopment Trust to so comply.

19 23. In accordance with the provisions of the Redevelopment Trust Agreement,  
20 (i) within 15 Days after the closing of the sale of any of Parcels 24, 25, 29, 30, 32, and 83, and  
21 the Excised Lands, the Redevelopment Trust shall retain 10 percent of the Net Sales Proceeds to  
22 be used solely for the purposes provided in this Consent Decree, and shall thereafter distribute  
23 the remainder of the Net Sale Proceeds from the sale to EPA's Site/Spill Special Account  
24 Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct  
25 or finance response actions at or in connection with the Sulphur Bank Site, or transferred by  
26 EPA to the Hazardous Substance Superfund; and (ii) within 15 Days after the annual accounting  
27 pursuant to the Redevelopment Trust Agreement, if Parcels 24, 25, 29, 30, 32, and 83, and the  
28

Excised Lands, have been leased in the previous year, the Redevelopment Trust shall retain 10 percent of the Net Lease Proceeds to be used solely for the purposes provided in this Consent Decree, and shall thereafter distribute the remainder of the Net Lease Proceeds from the lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, to EPA's Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct or finance response actions at or in connection with the Sulphur Bank Site, or transferred by EPA to the Hazardous Substance Superfund. Upon the sale of all of the Parcels (Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands), the Redevelopment Trust shall distribute the Trust fund balance (e.g., money paid by Defendants into the Redevelopment Trust, money retained from Net Sales Proceeds and Net Lease Proceeds, any funds paid by any other person or entity, and all earnings thereon), if any, less the fee of the Trustee of the Redevelopment Trust and any other expenses of administering the Redevelopment Trust, to EPA's Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct or finance response actions at or in connection with the Sulphur Bank Site, or transferred by EPA to the Hazardous Substance Superfund.

24. The Trustee of the Redevelopment Trust shall be compensated in accordance with the schedule attached to the Redevelopment Trust Agreement.

25. Phase I/II Environmental Site Assessment.

a. After the Defendants have transferred Parcels 33, 57, and 58 to the Redevelopment Trust, the Elem Tribe shall submit to BIA a final Scope of Work prepared by McGinnis and Associates LLC, 265 Rose Mist, Reno, Nevada 89521, or another qualified contractor subject to BIA's approval ("the approved Environmental Site Assessment ("ESA") contractor"), for performance of a Phase I/II Environmental Site Assessment for Parcels 33, 57, and 58, to be performed in accordance with the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527-05 (2005), and the ASTM Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, E 1903 - 97 (2002).

b. Upon receipt of the Scope of Work, BIA shall forward a contract to the approved ESA contractor for execution, and performance by the approved ESA contractor shall commence upon contract execution. The contract shall provide that the BIA will transfer appropriated funds in an amount up to \$50,000 to the approved ESA contractor for the purpose of conducting the Phase I/II Environmental Site Assessment, as described in the submitted Scope of Work. The approved ESA contractor shall submit invoices to BIA pursuant to the contract terms for purposes of payment. Payment of appropriated funds shall be subject to completion and delivery of a Phase I/II Environmental Site Assessment for Parcels 33, 57, and 58 to BIA, EPA Region IX, and the Elem Tribe.

c. The Elem Tribe acknowledges that the payment obligations of BIA under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Paragraph shall be interpreted or construed as a commitment or requirement that BIA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

26. First Right of Refusal for BIA Road 120. If the United States determines that BIA Road 120 is no longer needed by BIA, consistent with the Federal Property Management Regulations at 41 C.F.R. § 102-75-936, the United States may release its perpetual easement and right-of-way for BIA Road 120 to the Elem Tribe, provided that the Elem Tribe assumes any ongoing operating and maintenance obligations, including those relating to any response action taken by EPA on BIA Road 120.

#### IX. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

27. Interest on Late Payments. If Bradley Mining fails to make any payment under Paragraphs 8, 10, and 12 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. Bradley Mining shall make all payments required by this Paragraph in the manner described in Paragraphs 11 and 13 unless otherwise directed in writing by EPA.

28. Stipulated Penalty.

a. In addition to the Interest required by Paragraph 27 (Interest on Late Payments), if Bradley Mining fails to remit the payments required by Paragraphs 8, 10, and 12 when due, then Bradley Mining also shall pay stipulated penalties to the United States per day for each day that the payment is late as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th Day
\$250	15th through 30th Day
\$500	31st Day and beyond

b. Stipulated penalties are due and payable to the United States within 30 days of the date of the demand for payment of the penalties by the United States. All payments to the United States under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2, and DOJ Case Number 90-11-3-07593, and shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

c. At the time of payment of any stipulated penalties to the United States, Bradley Mining shall send copies of check(s), and any accompanying transmittal letter(s), to the United States, EPA Region IX, EPA Region X, and the Regional Financial Management Officers as provided in Section XIX (Notices and Submissions) of this Decree.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Bradley Mining of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.





1 negotiations under the preceding Paragraph, then the position advanced by EPA or, in a dispute  
2 relating to the Stibnite Mine Site, by the Forest Service,<sup>1/</sup> shall be considered binding unless,  
3 within 30 days after the conclusion of the informal negotiation period, a Defendant invokes the  
4 formal dispute resolution procedures of this Section by serving on the United States a written  
5 Statement of Position on the matter in dispute, including, but not limited to, any factual data,  
6 analysis or opinion supporting that position and any supporting documentation relied upon by  
7 the Defendant.

8           b.       Within 30 days after receipt of a Defendant's Statement of Position, the  
9 Government will serve on the Defendant its Statement of Position, including, but not limited to,  
10 any factual data, analysis, or opinion supporting that position and all supporting documentation  
11 relied upon by the Government. Within 10 days after receipt of the Government's Statement of  
12 Position, the Defendant may submit a Reply. Where appropriate, the Government may allow  
13 submission of supplemental statements of position by the parties to the dispute.

14           35.     Following receipt of a Defendant's Statement of Position and any other  
15 documents submitted pursuant to Paragraph 34, the Director of the Superfund Division, EPA  
16 Region IX, or the Forest Service Region 4 Regional Forester, will issue a final administrative  
17 decision resolving the dispute. The Director's or Regional Forester's decision shall be binding  
18 on the Defendant unless, within 20 Days after receipt of the decision, the Defendant files with  
19 the Court and serves on the United States a motion for judicial review of the decision setting  
20 forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and  
21 the schedule, if any, within which the dispute must be resolved to ensure orderly implementation  
22 of the Consent Decree. The United States may file a response to the Defendant's motion within  
23 the time period allowed by the Civil Local Rules of this Court.

24           36.     Judicial review of any dispute governed by this Section shall be governed by  
25

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26  
27 <sup>1/</sup> For purposes of Dispute Resolution under this Section X, EPA and the Forest Service shall be  
28 referred to collectively as the "Government."

1 applicable principles of law.

2 37. The invocation of formal dispute resolution procedures under this Section shall  
3 not extend, postpone or affect in any way any obligation of the Defendant under this Consent  
4 Decree, not directly in dispute, unless the Government or the Court agrees otherwise. Stipulated  
5 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed  
6 pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties  
7 shall accrue from the first day of noncompliance with any applicable provision of this Consent  
8 Decree. In the event that the Defendant does not prevail on the disputed issue, stipulated  
9 penalties shall be assessed and paid as provided in Section IX (Failure to Comply with Consent  
10 Decree Requirements) of this Consent Decree.

11 XI. COVENANTS BY PLAINTIFF, SETTling FEDERAL AGENCIES, AND THE  
12 ELEM TRIBE

13 38. Covenant Not to Sue Bradley Mining Settling Defendants and Bradley Trust  
14 Settling Defendants by United States. In consideration of the payments and land transfers that  
15 will be made by Defendants under the terms of this Consent Decree, and except as otherwise  
16 specifically provided in Section XII (Plaintiff's Reservation of Rights), the United States  
17 covenants not to sue or to take administrative action against: (1) the Bradley Mining Settling  
18 Defendants pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, with regard  
19 to the Covered Sites; and (2) the Bradley Trust Settling Defendants pursuant to Sections 106 and  
20 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, with regard to the Sulphur Bank Site. The covenant  
21 not to sue for the Bradley Mining Settling Defendants shall take effect upon (i) the receipt by the  
22 United States of all payments required by Paragraphs 8 and 10, (ii) the Assignment to the  
23 Redevelopment Trust, as required by Paragraph 19, of Parcels 29 and 30 and any other property  
24 rights Bradley Mining has with respect to Parcels 24, 25, 32, and 83, and (iii) any amount due  
25 under Section IX (Failure to Comply with Consent Decree Requirements). The covenant not to  
26 sue for the Bradley Trust Settling Defendants shall take effect upon the Assignment to the  
27 Redevelopment Trust, as required by Paragraph 19, of Parcels 24, 25, 32, and 83. These  
28

1 covenants not to sue accorded to the Bradley Mining Settling Defendants and the Bradley Trust  
2 Settling Defendants are conditioned upon satisfactory performance by Defendants of their  
3 obligations under this Consent Decree as set forth in this Paragraph. With respect to the Bradley  
4 Mining Settling Defendants and the Bradley Trust Settling Defendants, these covenants not to  
5 sue are also conditioned upon the veracity and completeness of the Financial Information  
6 provided to EPA by Bradley Mining and Bradley Trust. If the Financial Information of any  
7 Defendant is subsequently determined by EPA to be false or, in any material respect, inaccurate,  
8 such Defendant shall forfeit all payments made pursuant to this Consent Decree and these  
9 covenants not to sue and the contribution protection in Section XIV (Effect of Settlement;  
10 Contribution Protection) shall be null and void as to the Settling Defendants associated with that  
11 Defendant. Such forfeiture shall not constitute liquidated damages and shall not in any way  
12 foreclose the United States' right to pursue any other causes of action arising from such  
13 Defendant's false or materially inaccurate information. These covenants not to sue extend only  
14 to the Bradley Mining Settling Defendants and the Bradley Trust Settling Defendants and do not  
15 extend to any other person.

16 39. Covenant Not to Sue Redevelopment Trust by United States. In consideration of  
17 the actions that will be performed by the Redevelopment Trust, and except as provided in  
18 Paragraph 47, the United States covenants not to sue or take any other civil or administrative  
19 action against the Redevelopment Trust for any and all civil liability for injunctive relief or  
20 reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C.  
21 §§ 9606 or 9607(a), with respect to all Existing Contamination at the Sulphur Bank Site. With  
22 respect to any claim or cause of action asserted by the United States, the Redevelopment Trust  
23 shall bear the burden of proving that the claim or cause of action, or any part thereof, is  
24 attributable solely to Existing Contamination. This covenant not to sue shall take effect upon the  
25 latter date of: (1) the creation of the Redevelopment Trust and (ii) the Effective Date of this  
26 Consent Decree. This covenant not to sue extends only to the Redevelopment Trust and does not  
27 extend to any other person.  
28

40. Covenant for Settling Federal Agencies by EPA. In consideration of the payments that will be made by the United States, on behalf of the Settling Federal Agencies, and except as specifically provided in Section XII (Plaintiff's Reservation of Rights), EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), with respect to the Sulphur Bank Site and the Stibnite Mine Site. This covenant shall take effect upon receipt by EPA of all payments to be paid by the United States on behalf of the Settling Federal Agencies required by Paragraph 15 of Section VII (Payments by Defendants and Settling Federal Agencies). This covenant is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to the Settling Federal Agencies and does not extend to any other person.

41. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Sulphur Bank Site, the Stibnite Mine Site, and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

42. Elem Tribe's Release and Covenant Not to Sue the United States. The Elem Tribe hereby forever releases, discharges, covenants not to sue, and agrees not to assert (by way of the commencement of an action, the joinder of the United States in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or hereafter have, against the United States, its contractors or employees, including EPA, BIA, and DOI, with respect to the Sulphur Bank Site or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous

1 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42  
 2 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

3           b. any claim arising out of the response actions at or in connection with the  
 4 Sulphur Bank Site, including any claim based on EPA's selection of response actions, oversight  
 5 of response activities, or approval of plans for such activities, and any claim under the United  
 6 States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491,  
 7 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

8           c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C.  
 9 §§ 9607 or 9613, including any claim for damages for injury to, destruction of, or loss of natural  
 10 resources, and for the costs of any natural resource damage assessment, related to the Sulphur  
 11 Bank Site; or

12           d. any claim concerning a breach of a fiduciary duty or breach of trust with  
 13 respect to the Sulphur Bank Site or this Consent Decree.

14       43. Elem Tribe's Release and Covenant Not to Sue Settling Defendants. Upon the  
 15 transfer of the land from Bradley Trust to the Redevelopment Trust for the benefit of the  
 16 Elem Tribe as provided for in Paragraph 19, the Elem Tribe hereby forever releases, discharges,  
 17 covenants not to sue, and agrees not to assert (by way of the commencement of an action, the  
 18 joinder of the Settling Defendants in an existing action or in any other fashion) any and all  
 19 claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it  
 20 may have had, or hereafter have, against the Settling Defendants or their contractors or  
 21 employees with respect to the Sulphur Bank Site or this Consent Decree, including, but not  
 22 limited to:

23           a. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.  
 24 §§ 9607 and 9613, including any claim for damages for injury to, destruction of, or loss of  
 25 natural resources, and for the costs of any natural resource damage assessment, related to the  
 26 Sulphur Bank Site;

27           b. any claim arising out of the response actions at or in connection with the  
 28

1 Sulphur Bank Site, including any claim at common law; and

2 c. the Elem Tribe expressly releases and waives any and all claims, defenses,  
3 rights, and benefits which it may have against Settling Defendants under any state or federal law  
4 or in equity, which provides relief or exclusions from general releases such as:

5 “A general release does not extend to claims which the creditor does not know or suspect  
6 to exist in his favor at the time of executing the release, which if known by him must  
7 have materially affected his settlement with the debtor.”

8 44. Elem Tribe’s Release and Covenant Not to Sue the Redevelopment Trust. The  
9 Elem Tribe hereby forever releases, discharges, covenants not to sue, and agrees not to assert (by  
10 way of the commencement of an action, the joinder of the Redevelopment Trust in an existing  
11 action or in any other fashion) any and all claims, causes of action, suits or demands of any kind  
12 whatsoever in law or in equity which it may have had, or hereafter have, against the  
13 Redevelopment Trust or its contractors or employees with respect to the Sulphur Bank Site or  
14 this Consent Decree, including, but not limited to:

15 a. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.  
16 §§ 9607 and 9613, including any claim for damages for injury to, destruction of, or loss of  
17 natural resources, and for the costs of any natural resource damage assessment, related to the  
18 Sulphur Bank Site;

19 b. any claim arising out of the response actions at or in connection with the  
20 Sulphur Bank Site, including any claim at common law; and

21 c. the Elem Tribe expressly releases and waives any and all claims, defenses,  
22 rights, and benefits which it may have against the Redevelopment Trust under any state or  
23 federal law or in equity, which provides relief or exclusions from general releases such as:

24 “A general release does not extend to claims which the creditor does not know or suspect  
25 to exist in his favor at the time of executing the release, which if known by him must  
26 have materially affected his settlement with the debtor.”

27 Provided, however, the Elem Tribe reserves its rights against the Trustee of the Redevelopment  
28

1 Trust for claims based on the Trustee's negligence, gross negligence or willful acts or omissions  
2 in relation to its duties under the Redevelopment Trust Agreement.

3 **XII. PLAINTIFF'S RESERVATION OF RIGHTS**

4 45. EPA reserves the right to issue an administrative order seeking to compel DOI:  
5 (1) to perform response actions relating to the portions of the Sulphur Bank Site known as the  
6 Elem Indian Colony or BIA Road 120, or (2) to reimburse the United States for additional costs  
7 of response if:

8 (i) conditions at the Elem Indian Colony or BIA Road 120, previously unknown to EPA,  
9 are discovered, or

10 (ii) information, previously unknown to EPA, is received, in whole or in part,  
11 and EPA determines that these previously unknown conditions or information together with any  
12 other relevant information indicates that the remedial action performed or to be performed at  
13 Elem Indian Colony or BIA Road 120 is not protective of human health or the environment.

14 46. For purposes of Paragraph 45, the information and the conditions known to EPA  
15 shall include only that information and those conditions known to EPA as of the Effective Date  
16 of this Consent Decree, and set forth in any Action Memoranda, Engineering Evaluation/Cost  
17 Analyses, or other EPA decision documents related to EPA's past response actions at the  
18 Sulphur Bank Site that are part of the Sulphur Bank Site file as of the Effective Date of this  
19 Consent Decree.

20 47. General Reservation of Rights. The United States reserves, and this Consent  
21 Decree is without prejudice to, all rights of the United States against Settling Defendants and the  
22 Redevelopment Trust with respect to all matters not expressly included within the covenants set  
23 forth in Paragraphs 38 and 39. EPA and the federal natural resource trustees reserve, and this  
24 Consent Decree is without prejudice to, all rights against the Settling Federal Agencies with  
25 respect to all matters not expressly included within the covenant set forth in Paragraph 40.

26 a. Notwithstanding any other provision of this Consent Decree, the United  
27 States reserves, and this Consent Decree is without prejudice to, all rights against Settling  
28

1 Defendants with respect to:

2 1. claims based on a failure by Settling Defendants to meet a  
3 requirement of this Consent Decree;

4 2. liability arising from the past, present, or future disposal, release,  
5 or threat of release of hazardous substances, pollutants, contaminants, or solid wastes outside of  
6 the Covered Sites;

7 3. liability based on the ownership or operation of the Covered Sites  
8 by Settling Defendants when such ownership or operation commences after signature of this  
9 Consent Decree;

10 4. liability based on by Settling Defendants' transportation,  
11 treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or  
12 disposal of Waste Material at or in connection with the Covered Sites, other than as provided in a  
13 ROD, or otherwise ordered by EPA or authorized by law, after signature of this Consent Decree;

14 5. with respect to the Mt. Diablo Mine Site, the Stibnite Mine Site,  
15 the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite Mine Site,  
16 liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of  
17 any natural resource damage assessments;

18 6. criminal liability; and

19 7. liability for injunctive relief or administrative order enforcement  
20 under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions outside of the Covered  
21 Sites.

22 b. Notwithstanding any other provision of this Consent Decree, EPA and the  
23 federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all  
24 rights against the Settling Federal Agencies with respect to:

25 1. claims based on a failure by Settling Federal Agencies to meet a  
26 requirement of this Consent Decree;

27 2. liability arising from the past, present, or future disposal, release,  
28



or threat of release of hazardous substances, pollutants, contaminants, or solid wastes outside of the Covered Sites;

3. liability based on the ownership or operation of the Covered Sites by Settling Federal Agencies when such ownership or operation commences after signature of this Consent Decree;

4. liability based on Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Covered Sites, other than as provided in a ROD, or otherwise ordered by EPA or authorized by law, after signature of this Consent Decree;

5. with respect to the Mt. Diablo Mine Site, the Stibnite Mine Site, the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite Mine Site, liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

6. criminal liability; and

7. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions outside of the Covered Sites.

c. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against the Redevelopment Trust with respect to:

1. claims based on a failure to meet a requirement of this Consent Decree;

2. claims based on its negligence, gross negligence or willful acts or omissions in relation to its duties under the Redevelopment Trust Agreement;

3. liability for the exacerbation of Existing Contamination by the Redevelopment Trust; and

4. criminal liability.

1           48.     Notwithstanding any other provision of this Consent Decree, the United States  
 2 retains all authority and reserves all rights, and this Consent Decree is without prejudice to, the  
 3 right to reinstitute or reopen this action against a Defendant, or to commence a new action  
 4 seeking relief other than as provided in this Consent Decree from a Defendant or the Settling  
 5 Defendants associated with that Defendant, if the Financial Information provided, or the  
 6 financial certification made in Paragraph 73.b., by such Defendant is false or, in a material  
 7 respect, inaccurate.

8           49.     Notwithstanding any other provision of this Consent Decree, the United States  
 9 retains all authority and reserves all rights to take any and all response actions authorized by law.

### 10 11                   XIII. COVENANTS NOT TO SUE BY SETTling DEFENDANTS

12           50.     Settling Defendants hereby covenant not to sue and agree not to assert any claims  
 13 or causes of action against the United States, the Elem Tribe, the Redevelopment Trust, or their  
 14 contractors or employees, with respect to the Covered Sites or this Consent Decree, including,  
 15 but not limited to:

16                   a.     any direct or indirect claim for reimbursement from the EPA Hazardous  
 17 Substance Superfund based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C.  
 18 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

19                   b.     any claims arising out of response actions at or in connection with the  
 20 Covered Sites, including any claims under the United States Constitution, the California  
 21 Constitution, the Oregon Constitution, the Idaho Constitution, the Tucker Act, 42 U.S.C. § 1491,  
 22 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

23                   c.     any claims against the United States, the Redevelopment Trust or the  
 24 Elem Tribe, including any department, agency, or instrumentality of the United States or the  
 25 Elem Tribe, under CERCLA Sections 107 or 113 related to the Covered Sites; and

26                   d.     any claims against the United States arising out of response activities at  
 27 the Covered Sites, including claims based on EPA's or the Forest Service's or BLM's selection  
 28

1 of response actions, oversight of response activities or approval of plans for such activities;

2 e. provided, however, Settling Defendants reserve, and this Consent Decree  
3 is without prejudice to, all rights against the Redevelopment Trust with respect to claims based  
4 on a failure to meet a requirement of this Consent Decree.

5 51. Except as provided in Paragraph 53 (claims against other PRPs) and Paragraph 60  
6 (res judicata and other defenses), these covenants not to sue shall not apply to Settling  
7 Defendants in the event the United States brings a cause of action or issues an order against  
8 Settling Defendants pursuant to the reservations set forth in Section XII (Plaintiff's Reservation  
9 of Rights), other than in Paragraph 47.a. (claims for failure to meet a requirement of this Consent  
10 Decree) or 47.f. (criminal liability), but only to the extent that Settling Defendants' claims arise  
11 from the same response action or response costs that the United States is seeking against the  
12 Settling Defendants pursuant to the applicable reservation.

13 52. Nothing in this Consent Decree shall be deemed to constitute approval or  
14 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or  
15 40 C.F.R. § 300.700(d).

16 53. a. With the exception of claims or causes of actions against Bradley  
17 Mining's insurance carriers, Bradley Mining agrees not to assert any claims and to waive all  
18 claims or causes of action (including, but not limited to, claims or causes of action under Section  
19 107(a) and 113 of CERCLA) that it may have for all matters relating to the Covered Sites against  
20 Bradley Trust or any other person who is a potentially responsible party under CERCLA at any  
21 of the Covered Sites. This waiver shall not apply with respect to any defense, claim, or cause of  
22 action that Bradley Mining may have against any person if such person asserts a claim or cause  
23 of action relating to the Covered Sites against Bradley Mining.

24 b. Bradley Trust agrees not to assert any claims and to waive all claims or  
25 causes of action (including, but not limited to, claims or causes of action under Section 107(a)  
26 and 113 of CERCLA) that it may have for all matters relating to the Sulphur Bank Site against  
27 Bradley Mining or any other person who is a potentially responsible party under CERCLA at the  
28

1 Sulphur Bank Site. This waiver shall not apply with respect to any defense, claim, or cause of  
 2 action that Bradley Trust may have against any person if such person asserts a claim or cause of  
 3 action relating to the Sulphur Bank Site against Bradley Trust.

4 XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

5 54. Except as expressly provided in this Consent Decree, nothing in this Consent  
 6 Decree shall be construed to create any rights in, or grant any cause of action to, any person not a  
 7 Party to this Consent Decree. Except as provided in this Consent Decree, each of the Parties  
 8 expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of  
 9 CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party  
 10 may have with respect to any matter, transaction, or occurrence relating in any way to the  
 11 Covered Sites against any person not a Party hereto. Nothing in this Consent Decree diminishes  
 12 the rights of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C.  
 13 § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response  
 14 action and to enter into settlements that give rise to contribution protection under Section  
 15 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

16 55. Contribution Protection for Bradley Mining Settling Defendants and Bradley  
 17 Trust Settling Defendants.

18 a. The Parties agree, and by entering this Consent Decree this Court finds,  
 19 that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2)  
 20 of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Bradley Mining Settling Defendants are  
 21 entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions  
 22 or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be  
 23 otherwise provided by law, for “matters addressed” in this Consent Decree. For purposes of this  
 24 subparagraph a., “matters addressed” shall mean all response actions taken or to be taken and all  
 25 response costs incurred or to be incurred, at or in connection with the Covered Sites, by the  
 26 United States or any other person except for the State of California, the State of Oregon or the  
 27 State of Idaho; provided, however, that if the United States exercises rights under the  
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1 reservations in Section XII (Plaintiff's Reservation of Rights) of this Consent Decree, other than  
2 in Paragraph 47.a. (claims for failure to meet a requirement of this Consent Decree), or 47.f.  
3 (criminal liability), the "matters addressed" in this Consent Decree will no longer include those  
4 response costs or response actions that are within the scope of the exercised reservation.

5           b.       The Parties agree, and by entering this Consent Decree this Court finds,  
6 that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2)  
7 of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Bradley Trust Settling Defendants are entitled,  
8 as of the Effective Date of this Consent Decree, to protection from contribution actions or claims  
9 as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise  
10 provided by law, for "matters addressed" in this Consent Decree. For purposes of this  
11 subparagraph b., "matters addressed" shall mean all response actions taken or to be taken and all  
12 response costs incurred or to be incurred, at or in connection with the Sulphur Bank Site, by the  
13 United States or any other person except for the State of California; provided, however, that if  
14 the United States exercises rights under the reservations in Section XII (Plaintiff's Reservation  
15 of Rights) of this Consent Decree, other than in Paragraph 47.a. (claims for failure to meet a  
16 requirement of this Consent Decree), or 47.f. (criminal liability), the "matters addressed" in this  
17 Consent Decree will no longer include those response costs or response actions that are within  
18 the scope of the exercised reservation.

19       56.       The Parties agree, and by entering this Consent Decree this Court finds, that this  
20 settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of  
21 CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Federal Agencies are entitled, as of the  
22 Effective Date of this Consent Decree, to protection from contribution actions or claims as  
23 provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise  
24 provided by law, for "matters addressed" in this Consent Decree. For purposes of this  
25 Paragraph, "matters addressed" shall mean all response actions taken or to be taken and all  
26 response costs incurred or to be incurred, at or in connection with the Sulphur Bank Site and the  
27 Stibnite Mine Site, by the United States or any other person except for the State of California or  
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1 the State of Idaho.

2 57. The Parties further agree, and by entering this Consent Decree this Court finds,  
3 that upon the creation of the Redevelopment Trust, the Redevelopment Trust shall be entitled to  
4 protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42  
5 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this  
6 Consent Decree. For purposes of this Paragraph, “matters addressed” shall mean all response  
7 actions taken or to be taken and all response costs incurred or to be incurred, at or in connection  
8 with the Sulphur Bank Site by the United States or any other person except for the State of  
9 California.

10 58. Each Settling Defendant shall, with respect to any suit or claim brought by it for  
11 matters related to this Consent Decree, notify the United States in writing no later than 60 days  
12 prior to the initiation of such suit or claim.

13 59. Each Settling Defendant shall, with respect to any suit or claim brought against it  
14 for matters related to this Consent Decree, notify in writing the United States within 10 days of  
15 service of the complaint on it. In addition, the Settling Defendant shall notify the United States  
16 within 10 days of service on it or receipt by it of any Motion for Summary Judgment and within  
17 10 days of receipt by it of any order from a court setting a case for trial.

18 60. In any subsequent administrative or judicial proceeding initiated by the United  
19 States for injunctive relief, recovery of response costs, or other relief relating to the Covered  
20 Sites, Settling Defendants shall not assert, and may not maintain, any defense or claim based  
21 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting,  
22 or other defenses based upon any contention that the claims raised by the United States in the  
23 subsequent proceeding were or should have been brought in the instant case; provided, however,  
24 that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in  
25 Section XI (Covenants by Plaintiff, Settling Federal Agencies, and the Elem Tribe).

#### 26 XV. ACCESS AND INSTITUTIONAL CONTROLS

27 61. If the Covered Sites, or any property where access and/or land/water use  
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1 restrictions are needed to implement response activities at the Covered Sites, are owned or  
2 controlled by either of the Defendants, such Defendant shall meet the requirements of this  
3 Paragraph. Commencing on the date of lodging of this Consent Decree, Defendants, with  
4 respect to all Covered Sites, shall provide the United States and its representatives, including  
5 EPA and its contractors, the Forest Service and its contractors, and BLM and its contractors,  
6 with access at all reasonable times to the Covered Sites, or such other property, for the purpose  
7 of conducting any response activity related to the Covered Sites, including, but not limited to, the  
8 following activities:

- 9           1.       Monitoring, investigation, removal, remedial, operation and maintenance,  
10 or other response activities at the Covered Sites;
- 11           2.       Verifying any data or information submitted to the United States or the  
12 State;
- 13           3.       Conducting investigations regarding contamination at or near the Covered  
14 Sites;
- 15           4.       Obtaining samples;
- 16           5.       Assessing the need for, planning, or implementing additional response  
17 actions at or near the Covered Sites;
- 18           6.       Inspecting and copying records, operating logs, contracts, or other  
19 documents maintained or generated by Defendants or their agents, consistent with Section XVII  
20 (Access to Information);
- 21           7.       Assessing Defendants' compliance with this Consent Decree;
- 22           8.       Determining whether the Covered Sites or other real property are being  
23 used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted  
24 under the Consent Decree; and
- 25           9.       Implementing, monitoring, maintaining, reporting on, and enforcing any  
26 Institutional Controls.

- 27           62.      If the Sulphur Bank Site, or any property where access and/or land/water use  
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1 restrictions are needed to implement response activities at the Sulphur Bank Site, is owned or  
2 controlled by the Redevelopment Trust, the Redevelopment Trust shall meet the requirements of  
3 this Paragraph.

4 a. The Redevelopment Trust, when it owns or controls Parcels 24, 25, 29, 30,  
5 32, 33, 39, 57, 58, 81, and 83, and the Excised Lands (the "Covered Parcels"), shall provide:  
6 (i) the United States and its representatives, including EPA and its contractors, and (ii) the State  
7 of California and its representatives, with access at all reasonable times to the Covered Parcels,  
8 or such other property, for the purpose of conducting any response activity related to the Sulphur  
9 Bank Site, including, but not limited to, the following activities:

- 10 1. Monitoring, investigation, removal, remedial, operation and  
11 maintenance, or other activities at the Sulphur Bank Site;
  - 12 2. Verifying any data or information submitted to the United States or  
13 the State;
  - 14 3. Conducting investigations regarding contamination at or near the  
15 Sulphur Bank Site;
  - 16 4. Obtaining samples;
  - 17 5. Assessing the need for, planning, or implementing additional  
18 response actions at or near the Sulphur Bank Site;
  - 19 6. Inspecting and copying records, operating logs, contracts, or other  
20 documents maintained or generated by the Redevelopment Trust or its agents;
  - 21 7. Assessing the Redevelopment Trust's compliance with this  
22 Consent Decree;
  - 23 8. Determining whether the Covered Parcels or other real property  
24 are being used in a manner that is prohibited or restricted, or that may need to be prohibited or  
25 restricted under the Consent Decree; and
  - 26 9. Implementing, monitoring, maintaining, reporting on, and  
27 enforcing any Institutional Controls.
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b. with respect to Parcel 29 and Parcel 30, including the Excised Lands, as of the Effective Date of this Consent Decree, the Redevelopment Trust, except as provided in Paragraph 62.d., shall not use Parcel 29 and Parcel 30, including the Excised Lands, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Existing Contamination or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Sulphur Bank Site. In addition, for any portion of Parcel 29 and Parcel 30, including the Excised Lands, that is either owned or controlled by the Redevelopment Trust, the following restrictions shall apply:

(i) where response actions have not, are not or will not be carried out by EPA, the Redevelopment Trust shall consult with EPA at least 120 days prior to commencing on-site activities that may impact the Sulphur Bank Site to ensure that those proposed activities will not interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Sulphur Bank Site; and

(ii) where response actions have been, are or will be carried out by EPA, or Institutional Controls have been imposed by EPA, the following restrictions shall apply and include, but are not limited to:

1. No excavation, drilling, grading, investigation, trenching or backfilling of soil without first giving notice to and obtaining prior written approval from EPA Region IX;

2. No new construction of any kind or excavation activities involving the removal or displacement of more than 10 cubic yards of soil without: (i) obtaining the prior written approval of EPA in accordance with Paragraph 62.d.; and (ii) meeting the following requirements: (a) the new construction or excavation shall be supported by subsurface exploration and analytical data sufficient to characterize the construction area for the possible existence of Existing Contamination; (b) if Existing Contamination is known to be present or is discovered in the construction or excavation area, it shall either be remediated or the new

1 construction and excavation activities shall be designed to protect the Response Action Systems,  
2 and all buildings and structures shall be appropriately designed to protect occupants; and  
3 (c) appropriate worker and public health and safety precautions shall be planned and  
4 implemented prior to commencing construction or excavation, including, but not limited to,  
5 preparation of a health and safety plan for the proposed activity, performance of dust control,  
6 implementation of air monitoring programs, use of appropriate personal protective equipment,  
7 use of appropriate engineering controls, and other appropriate forms of worker protection;

8                   3.       No human habitation and no construction or installation of  
9 buildings for use as a residence, hospital, medical care facility, day care center, or school for  
10 persons under the age of 21 years;

11                   4.       No injecting into or pumping from hydrothermal subsurface  
12 geologic systems that may adversely affect any remedy designed to treat water in the Herman  
13 Impoundment or that would result in increased discharges to either Clear Lake, the Herman  
14 Impoundment or to the wetlands north of the Sulphur Bank Site;

15                   5.       No drilling for a water supply for residential or commercial use,  
16 geothermal resources, oil or gas.

17                   6.       No extraction of groundwater for purposes or uses other than a  
18 removal or remediation at the Sulphur Bank Site;

19                   7.       No alteration of surface water controls constructed or to be  
20 constructed as part of a removal or remediation at the Sulphur Bank Site;

21                   8.       No creation of topographic low areas where water may pond,  
22 including accessory structures, swimming pools, and spas;

23                   9.       No other activity that has the potential to interfere with the  
24 function, operation or maintenance of Response Action Systems located on the Sulphur Bank  
25 Site; and

26                   10.      No conveyance of any interest in any portion of Parcel 29 or Parcel  
27 30, including the Excised Lands, without first giving notice to EPA Region IX, accompanied by  
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1 a statement of the name of the grantee and the intended uses of the land contemplated by the  
2 grantee. The Redevelopment Trust may sell, assign, transfer or exchange Parcel 29 or Parcel 30,  
3 including the Excised Lands, only if any Proprietary Controls required by Paragraph 62 have  
4 been recorded by the Redevelopment Trust with respect to Parcels 29 and 30, including the  
5 Excised Lands.

6 c. with respect to Parcel 25 and Parcel 32, as of the Effective Date of this  
7 Consent Decree, the Redevelopment Trust, except as provided in Paragraph 62.d., shall not use  
8 Parcel 25 and Parcel 32 in any manner that EPA determines will pose an unacceptable risk to  
9 human health or to the environment due to exposure to Existing Contamination or interfere with  
10 or adversely affect the implementation, integrity, or protectiveness of the removal or remedial  
11 measures to be performed at the Sulphur Bank Site, and shall be subject to the following  
12 restrictions:

13 i. For the Restricted Areas of Parcel 25 and the Restricted Areas of  
14 Parcel 32:

15 1. No excavation, grading, trenching, investigatory drilling or boring, or backfilling of soil  
16 without (i) first giving notice to and obtaining prior written approval from EPA in  
17 accordance with Paragraph 62.d.; and (ii) meeting the following requirements: (a) the  
18 new construction or excavation shall be supported by subsurface exploration and  
19 analytical data sufficient to characterize the construction area for the possible existence  
20 of Existing Contamination; (b) if Existing Contamination is known to be present or is  
21 discovered in the construction or excavation area, it shall either be remediated or the new  
22 construction and excavation activities shall be designed to protect the Response Action  
23 Systems, and all buildings and structures shall be appropriately designed to protect  
24 occupants; and (c) appropriate worker and public health and safety precautions shall be  
25 planned and implemented prior to commencing construction or excavation, including, but  
26 not limited to, preparation of a health and safety plan for the proposed activity,  
27 performance of dust control, implementation of air monitoring programs, use of  
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- 1 appropriate personal protective equipment, use of appropriate engineering controls, and
- 2 other appropriate forms of worker protection;
- 3 2. No injecting into or pumping from hydrothermal subsurface geologic systems that may
- 4 adversely affect any remedy designed to treat water in the Herman Impoundment or that
- 5 would result in increased discharges or changes in discharges to either Clear Lake, the
- 6 Herman Impoundment or to the wetlands north of the Sulphur Bank Site;
- 7 3. No drilling for a water supply for residential or commercial use, geothermal resources,
- 8 oil or gas.
- 9 4. No alteration of surface water controls constructed or to be constructed on any part of
- 10 Parcels 25 and 32 as part of a removal or remediation at the Sulphur Bank Site;
- 11 5. No other activity that has the potential to interfere with the function, operation or
- 12 maintenance of Response Action Systems located on the Sulphur Bank Site;
- 13 6. No conveyance of any interest in any portion of Parcel 25 or Parcel 32 without first
- 14 giving notice to EPA, accompanied by a statement of the name of the grantee and the
- 15 intended uses of the land contemplated by the grantee. The Redevelopment Trust may
- 16 sell, assign, transfer or exchange Parcel 25 or Parcel 32 only if any Proprietary Controls
- 17 required by Paragraph 62 have been recorded by the Redevelopment Trust with respect
- 18 to Parcels 25 and 32;
- 19 7. No human habitation and no construction or installation of buildings for use as a
- 20 residence, hospital, medical care facility, day care center, or school for persons under the
- 21 age of 21 years; and
- 22 8. No creation of topographic low areas where water may pond, including accessory
- 23 structures, swimming pools, and spas;

24 ii. For those areas of Parcels 25 and 32 that are not part of the

25 Restricted Areas of Parcel 25 or the Restricted Areas of Parcel 32:

- 26 1. No drilling, injecting into or pumping from groundwater or hydrothermal subsurface
- 27 geologic systems that may adversely affect any remedy designed to treat water in the
- 28

1 Herman Impoundment or that would result in discharges or changes in discharges to  
2 either Clear Lake, the Herman Impoundment or to the wetlands north of the Sulphur  
3 Bank Site;

- 4 2. No alteration of surface water controls constructed or to be constructed on any part of  
5 Parcels 25 and 32 as part of a removal or remediation at the Sulphur Bank Site;  
6 3. No other activity that has the potential to interfere with the function, operation or  
7 maintenance of Response Action Systems located on the Sulphur Bank Site; and  
8 4. No conveyance of any interest in any portion of Parcel 25 or Parcel 32 without first  
9 giving notice to EPA, accompanied by a statement of the name of the grantee and the  
10 intended uses of the land contemplated by the grantee. The Redevelopment Trust may  
11 sell, assign, transfer or exchange Parcel 25 or Parcel 32 only if any Proprietary Controls  
12 required by Paragraph 62 have been recorded by the Redevelopment Trust with respect  
13 to Parcels 25 and 32.

14 d. If the Redevelopment Trust seeks an exception to the land/water use  
15 restrictions in Paragraph 62.b. or c., the Redevelopment Trust must first obtain EPA's prior  
16 written approval. No less than 120 days prior to the anticipated commencement of activities, the  
17 Redevelopment Trust shall submit such a request in writing to EPA Region IX. The written  
18 request shall include all necessary supporting documentation, including, but not limited to,  
19 appropriate design documents, work plans, calculations, and the amount and type of proposed  
20 Financial Security as provided in Paragraph 65. The Redevelopment Trust shall reimburse the  
21 United States for its response costs relating to the Redevelopment Trust's proposed activity,  
22 including, but not limited to, review of the application, approval or disapproval, oversight and  
23 monitoring of the proposed activity, and enforcement activities related thereto. EPA will  
24 respond to such request within a reasonable time by: 1) providing written approval for the  
25 exception, subject to the requirement that the Redevelopment Trust, pursuant to Paragraph 65,  
26 provide evidence that it has established and will maintain Financial Security in the amount  
27 required by EPA; 2) providing written approval of the exception with modifications, and subject  
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1 to the requirement that the Redevelopment Trust, pursuant to Paragraph 65, provide evidence  
2 that it has established and will maintain Financial Security in the amount required by EPA;  
3 3) requesting further information in support of the request; or 4) denying the request. The  
4 decision of EPA shall be final and shall not be subject to the Dispute Resolution procedures of  
5 this Consent Decree or to judicial review.

6 e. Prior to transferring any of the Excised Lands or Parcels 25, 29, 30, and  
7 32, the Redevelopment Trust agrees, at the request and direction of EPA, to execute and record  
8 Proprietary Controls or amendments to existing Proprietary Controls in the Recorder's Office in  
9 Lake County, California, that: (i) grant a right of access to conduct any activity regarding the  
10 Consent Decree including, but not limited to, those activities listed in Paragraph 62.a., and  
11 (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 62.b. and c.,  
12 including, but not limited to, the specific restrictions listed therein. EPA may determine that  
13 additional Proprietary Controls are required following issuance of EPA's Record of Decision for  
14 Operable Unit One of the Sulphur Bank Site.

15 63. a. If EPA determines that land/water use restrictions in the form of state or  
16 local laws, regulations, ordinances or other governmental controls are needed to implement  
17 response activities at Parcels 25, 29, 30, and 32, and the Excised Lands, ensure the integrity and  
18 protectiveness thereof, or ensure non-interference therewith, the Redevelopment Trust shall  
19 cooperate with EPA's efforts to secure such governmental controls.

20 b. If EPA or the Forest Service determines that land/water use restrictions in  
21 the form of state or local laws, regulations, ordinances or other governmental controls are needed  
22 to implement response activities at the Stibnite Mine Site, ensure the integrity and protectiveness  
23 thereof, or ensure non-interference therewith, Bradley Mining shall cooperate with EPA's or the  
24 Forest Service's efforts to secure such governmental controls.

25 64. Notwithstanding any provision of this Consent Decree, the United States retains  
26 all of its access authorities and rights, as well as all of its rights to require land/water use  
27 restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any  
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1 other applicable statute or regulations.

2 XVI. FINANCIAL SECURITY

3 65. a. If the Redevelopment Trust has sought and obtained EPA's written  
4 approval for an exception to the land/water use restrictions in Paragraph 62.b. or c. and at least  
5 30 days prior to the anticipated commencement of activities on Parcel 25, 29, 30, or 32, or the  
6 Excised Lands, the Redevelopment Trust shall provide EPA Region IX with evidence that it has  
7 established and will maintain Financial Security to cover potential damage to existing or future  
8 removal or remedial measures on the Sulphur Bank Site in the amount required by EPA in one or  
9 more of the following forms listed below in subparagraph b.

10 b. Forms of Financial Security. The Redevelopment Trust shall provide EPA  
11 Region IX with evidence of one or more of the following forms of Financial Security:

12 1. A surety bond unconditionally guaranteeing payment that is issued  
13 by a surety company among those listed as acceptable sureties on federal bonds as set forth in  
14 Circular 570 of the U.S. Department of the Treasury;

15 2. One or more irrevocable letters of credit, payable to or at the  
16 direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to  
17 issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a  
18 federal or state agency;

19 3. A trust fund established for the benefit of EPA that is administered  
20 by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are  
21 regulated and examined by a federal or state agency;

22 4. A policy of insurance that (i) names the United States as an  
23 additional insured and provides the United States with acceptable rights as a beneficiary thereof;  
24 and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in  
25 the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by  
26 a federal or state agency; or

27 5. A demonstration by the Redevelopment Trust that the  
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1 Redevelopment Trust meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to  
 2 the amount of the Financial Security specified above (plus the amount(s) of any other federal or  
 3 any state environmental obligations financially assured through the use of a financial test or  
 4 guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's  
 5 satisfaction.<sup>2/</sup>

6 66. If the Redevelopment Trust can show that the estimated cost to cover potential  
 7 damage to existing or future removal or remedial measures has diminished below the amount set  
 8 forth in Paragraph 65 after the Effective Date of this Consent Decree, the Redevelopment Trust  
 9 may, on any anniversary date of the Effective Date of this Consent Decree, or at any other time  
 10 agreed to by EPA and the Redevelopment Trust, reduce the amount of the Financial Security  
 11 provided under Paragraph 65 to the revised estimated cost of potential damage to the remedy.  
 12 The Redevelopment Trust shall submit a written proposal for such reduction to EPA, in  
 13 accordance with the requirements of this Paragraph, and may reduce the amount of the Financial  
 14 Security upon approval by EPA. In the event of a dispute, the Redevelopment Trust may reduce  
 15 the amount of the Financial Security in accordance with the final administrative or judicial  
 16 decision resolving the dispute.

17 67. The Redevelopment Trust may change the form of Financial Security provided  
 18 under Paragraph 65 at any time, upon notice to and approval by EPA Region IX, provided that  
 19 the new form of Financial Security meets the requirements of Paragraph 65. In the event of a  
 20 dispute, the Redevelopment Trust may change the form of the Financial Security only in  
 21 accordance with the final administrative or judicial decision resolving the dispute.

## 22 XVII. ACCESS TO INFORMATION

23 68. Defendants shall provide to Plaintiff, upon request, copies of all documents and  
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25 <sup>2/</sup> For purposes of this Consent Decree, references in 40 C.F.R. § 264.143(f) to the "sum of  
 26 current closure and post-closure costs estimates and the current plugging and abandonment costs  
 27 estimates" shall mean the amount of Financial Security required by EPA for the activity  
 28 proposed by the Redevelopment Trust.



1 information within their possession or control or that of their contractors or agents relating to  
2 activities at the Covered Sites or to the implementation of this Consent Decree, including, but  
3 not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,  
4 reports, sample traffic routing, correspondence, or other documents or information related to the  
5 Covered Sites.

6 69. Confidential Business Information and Privileged Documents.

7 a. Defendants may assert business confidentiality claims covering part or all  
8 of the documents or information submitted to Plaintiff under this Consent Decree to the extent  
9 permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and  
10 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by Plaintiff will  
11 be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
12 confidentiality accompanies documents or information when they are submitted to Plaintiff, or if  
13 Plaintiff has notified Defendants that the documents or information are not confidential under the  
14 standards of Section 104(e)(7) of CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be  
15 given access to such documents or information without further notice to Defendants.

16 b. Defendants may assert that certain documents, records, and other  
17 information are privileged under the attorney-client privilege or any other privilege recognized  
18 by federal law. If a Defendant asserts such a privilege in lieu of providing documents, it shall  
19 provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the  
20 date of the document, record, or information; (3) the name, title, affiliation (e.g., company or  
21 firm), and address of the author of the document, record, or information; (4) the name and title of  
22 each addressee and recipient; (5) a description of the subject of the document, record, or  
23 information; and (6) the privilege asserted. However, no document, report or other information  
24 created or generated pursuant to the requirements of the Consent Decree shall be withheld on the  
25 grounds that it is privileged.

26 70. No claim of confidentiality shall be made with respect to any data, including, but  
27 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or  
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1 engineering data, or any other documents or information evidencing conditions at or around the  
2 Covered Sites.

3 XVIII. RETENTION OF RECORDS; CERTIFICATION

4 71. Until 10 years after the Defendants' receipt of EPA's or the Forest Service's  
5 notification, transmitted pursuant to Paragraph 75, of the issuance of EPA's or the Forest  
6 Service's Certification of Completion of the remedial action for each of the Covered Sites,  
7 Defendants shall preserve and retain all records and documents now in their possession or  
8 control, or which come into their possession or control, that relate in any manner to response  
9 actions taken at the Covered Sites or liability of any person for response actions conducted and  
10 to be conducted at the Covered Sites, regardless of any corporate or other retention policy to the  
11 contrary.

12 72. At the conclusion of this document retention period, Defendants shall notify the  
13 United States at least 90 days prior to the destruction of any such records or documents, and,  
14 upon request by the United States, Defendants shall deliver any such records or documents to  
15 EPA. Defendants may assert that certain documents, records and other information are  
16 privileged under the attorney-client privilege or any other privilege recognized by federal law. If  
17 Defendants assert such a privilege, they shall provide Plaintiff with the following: (1) the title of  
18 the document, record, or information; (2) the date of the document, record, or information; (3)  
19 the name, title, affiliation (e.g., company or firm), and address of the author of the document,  
20 record, or information; (4) the name and title of each addressee and recipient; (5) a description of  
21 the subject of the document, record, or information; and (6) the privilege asserted. However, no  
22 document, report or other information created or generated pursuant to the requirements of the  
23 Consent Decree shall be withheld on the grounds that it is privileged.

24 73. Defendants hereby certify that, to the best of their knowledge and belief, after  
25 thorough inquiry, they have:

26 a. not altered, mutilated, discarded, destroyed or otherwise disposed of any  
27 records, documents or other information relating to their potential liability regarding the Covered  
28

1 Sites since notification of potential liability by the United States or the State of California or the  
 2 State of Idaho or the State of Oregon or the filing of suit against them regarding any of the  
 3 Covered Sites, and that they have fully complied with any and all EPA requests for information  
 4 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and Section  
 5 3007 of RCRA, 42 U.S.C. § 6927; and

6 b. submitted to EPA Financial Information that fairly, accurately, and  
 7 materially sets forth their financial circumstances, and that those circumstances have not  
 8 materially changed between the time the Financial Information was submitted to EPA and the  
 9 time Defendants execute this Consent Decree.

10 74. The United States acknowledges that each Settling Federal Agency (1) is subject  
 11 to all applicable Federal record retention laws, regulations, and policies; and (2) has fully  
 12 complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e)  
 13 of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 14 XIX. NOTICES AND SUBMISSIONS

15 75. Whenever, under the terms of this Consent Decree, written notice is required to be  
 16 given or a report or other document is required to be sent by one Party to another, it shall be  
 17 directed to the individuals at the addresses specified below, unless those individuals or their  
 18 successors give notice of a change to the other Parties in writing. All notices and submissions  
 19 shall be considered effective upon receipt, unless otherwise provided. Written notice as  
 20 specified herein shall constitute complete satisfaction of any written notice requirement of the  
 21 Consent Decree with respect to the United States, EPA, the Forest Service, BLM, BIA, DOI, the  
 22 Settling Federal Agencies, the Elem Tribe, the Redevelopment Trust, and the Settling  
 23 Defendants, respectively.

#### 24 As to the United States:

25 Chief, Environmental Enforcement Section  
 26 Environment and Natural Resources Division  
 27 U.S. Department of Justice (DJ # 90-11-3-07593)  
 28 P.O. Box 7611, Ben Franklin Station  
 Washington, D.C. 20044

1 Robert D. Mullaney  
2 Senior Counsel  
3 Environmental Enforcement Section  
4 U.S. Department of Justice  
5 301 Howard Street, Suite 1050  
6 San Francisco, CA 94105  
7  
8 Chief, Environmental Defense Section  
9 Environment and Natural Resources Division  
10 U.S. Department of Justice (DJ # 90-11-6-18411)  
11 P.O. Box 7611  
12 Washington, D.C. 20044-7611

13 Paul Cirino  
14 Trial Attorney  
15 Environmental Defense Section  
16 U.S. Department of Justice  
17 P.O. Box 7611  
18 Washington, D.C. 20044-7611

19 As to EPA Region IX:

20 Larry Bradfish, ORC-3  
21 Assistant Regional Counsel  
22 United States Environmental Protection Agency  
23 75 Hawthorne Street  
24 San Francisco, CA 94105

25 and

26 Gary Riley, SFD-7-2  
27 Remedial Project Manager  
28 United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

29 As to EPA Region X:

30 Chris Field  
31 U.S. Environmental Protection Agency  
32 Region X  
33 1200 6th Avenue, Suite 900  
34 ECL-116  
35 Seattle, WA 98101

36 and

37 Wendy Watson  
38 Attorney-Adviser  
39 U.S. Environmental Protection Agency  
40 Region X  
41 1200 6th Avenue, Suite 900  
42 ORC-158

1 Seattle, WA 98101

2 As to the Regional Financial Management Officers:

3 Joe Schmidt, PMD-5  
4 United States Environmental Protection Agency  
5 75 Hawthorne Street  
6 San Francisco, CA 94105

7 Financial Management Officer, Region X  
8 Attn: Chris Field  
9 United States Environmental Protection Agency  
10 1200 6th Avenue, Suite 900  
11 ECL-116  
12 Seattle, WA 98101

13 As to the Forest Service:

14 Gary Fremerman  
15 USDA/OGC  
16 3351 South Building  
17 1400 Independence Avenue, S.W.  
18 Washington, D.C. 20250-1412

19 Dean Morgan  
20 Salmon-Challis NF  
21 HC 63, Box 1669, Hwy. 93  
22 Challis, ID 83226

23 As to BLM, BIA or DOI:

24 Karen Koch  
25 Assistant Regional Solicitor  
26 Office of the Regional Solicitor  
27 U.S. Department of the Interior  
28 2800 Cottage Way, Suite E-1712  
Sacramento, CA 95825

and

Casey S. Padgett, Assistant Solicitor  
Branch of Environmental Compliance and Response  
Office of the Solicitor, Mail Stop #5530  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

As to the Elem Tribe:

Brian J. Cleary, Esq.  
The Cleary Law Group, P.C.  
101 West Prairie Center, #362

Hayden, ID 83835

and

Nathan R. Brown II  
c/o The Elem Pomo Tribe  
13300 E. Highway 20, Suite B  
P.O. Box 757  
Clearlake Oaks, CA 95423

As to the Redevelopment Trust:

Tom Connolly, Esq.  
Trustee, Redevelopment Trust  
Connolly Rosania & Lofstedt  
950 Spruce Street, Suite 1C  
Louisville, CO 80027

As to Bradley Mining or the Bradley Mining Settling Defendants:

Frederick Bradley  
President  
1814 Springvale Lane  
Lincoln, CA 95648

and

Jon K. Wactor, Esq.  
Wactor & Wick LLP  
180 Grand Avenue, Suite 950  
Oakland, CA 94612

As to Bradley Trust or the Bradley Trust Settling Defendants:

Frederick Bradley  
Trustee  
1814 Springvale Lane  
Lincoln, CA 95648

and

Jon K. Wactor, Esq.  
Wactor & Wick LLP  
180 Grand Avenue, Suite 950  
Oakland, CA 94612

XX. EFFECTIVE DATE

76. The Effective Date of this Consent Decree shall be the date upon which this  
Consent Decree is entered by the Court, except as otherwise provided herein.

XXI. RETENTION OF JURISDICTION

77. This Court retains jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XXII. INTEGRATION/APPENDICES

78. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. Other than the executed final versions of Appendices and deliverables that are subsequently submitted pursuant to this Consent Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree.

“Appendix A” contains maps that generally depict the Covered Sites.

“Appendix B” contains a map generally depicting Parcels 24, 25, 28, 29, 30, 32, 33, 39, 57, 58, 81, 82, and 83 as they are currently configured.

“Appendix C” is a list of the financial documents submitted to EPA by Defendants.

“Appendix D” contains the Right of Way Plats, Drawing No. 17-7-46, dated July 1970, and Drawing No. 17-7-48, dated August 3, 1970, delineating the grant of easement for a right-of-way for a road over, across, in and upon lands located in Lake County, California.

“Appendix E” is a map generally depicting those areas of Parcels 33 and 57 (the Excised Lands) that are not assigned to the Elem Tribe due to the presence of hazardous substances.

“Appendix F” is the unexecuted draft Redevelopment Trust Agreement.

“Appendix G” contains a draft grant deed to transfer the Assigned Property other than Parcel 24 and a separate draft grant deed to transfer Parcel 24.

“Appendix H” is a list of easements for access and utilities that are approved by the United States for the Assigned Property.

“Appendix I” contains a map that generally depicts Parcel 25, including the Restricted Areas of Parcel 25.

1 “Appendix J” contains a map that generally depicts Parcel 32, including the Restricted  
2 Areas of Parcel 32.

3 “Appendix K” is a draft lien on the title of the Retained Lands.

4 XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

5 79. This Consent Decree shall be lodged with the Court for a period of not less than  
6 thirty (30) days for public notice and comment. The United States reserves the right to withdraw  
7 or withhold its consent if the comments regarding the Consent Decree disclose facts or  
8 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.  
9 Settling Defendants and the Elem Tribe consent to the entry of this Consent Decree without  
10 further notice.

11 80. If for any reason the Court should decline to approve this Consent Decree in the  
12 form presented, this agreement is voidable at the sole discretion of any Party and the terms of the  
13 agreement may not be used as evidence in any litigation between the Parties.

14 XXIV. SIGNATORIES/SERVICE

15 81. Each undersigned representative of Settling Defendants to this Consent Decree,  
16 the Elem Tribe, as well as the Assistant Attorney General for the Environment and Natural  
17 Resources Division of the United States Department of Justice, or her delegate, certifies that he  
18 or she is fully authorized to enter into the terms and conditions of this Consent Decree and to  
19 execute and legally bind such Party to this document.

20 82. Settling Defendants and the Elem Tribe hereby agree not to oppose entry of this  
21 Consent Decree by this Court or to challenge any provision of this Consent Decree unless the  
22 United States has notified Settling Defendants and the Elem Tribe in writing that it no longer  
23 supports entry of the Consent Decree.

24 83. Each Settling Defendant shall identify, on the attached signature page, the name,  
25 address and telephone number of an agent who is authorized to accept service of process by mail  
26 on behalf of the Settling Defendant with respect to all matters arising under or relating to this  
27 Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive  
28



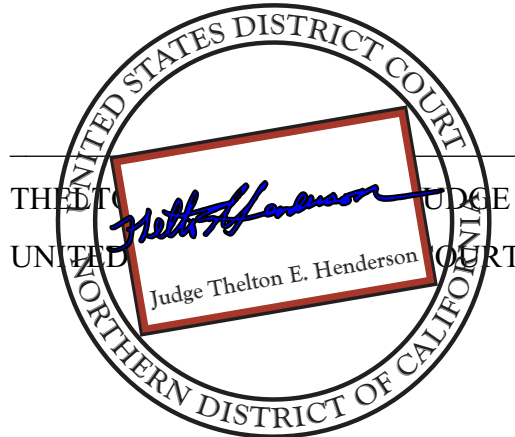
the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXV. FINAL JUDGMENT

84. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Elem Tribe, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

IT IS SO ORDERED.

Dated: 04/18/2012



1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United  
2 States v. Bradley Mining Company, et al.

3  
4 FOR THE UNITED STATES OF AMERICA

5  
6 Dated: 1/12/12

Ignacia S. Moreno

7 Ignacia S. Moreno  
8 Assistant Attorney General  
9 Environment and Natural Resources  
10 Division  
11 U.S. Department of Justice  
12 Washington, D.C. 20530

13 Dated: 2/14/12

Robert D. Mullaney

14 Robert D. Mullaney  
15 Senior Counsel  
16 Environmental Enforcement Section  
17 Environment and Natural Resources  
18 Division  
19 U.S. Department of Justice  
20 301 Howard Street, Suite 1050  
21 San Francisco, California 94105


22 Dated: 2/14/12

Robert D. Mullaney for

23 Paul Cirino  
24 Trial Attorney  
25 Environmental Defense Section  
26 Environment and Natural Resources Division  
27 U.S. Department of Justice  
28 P.O. Box 7611  
Washington, D.C. 20044-7611

1 FOR THE UNITED STATES OF AMERICA (Cont.)

2  
3  
4 Dated: 2/14/2012

  
Jane Diamond  
Director, Superfund Division  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

5  
6  
7  
8  
9  
10 Dated: January 18, 2012

  
Larry Bradfish  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

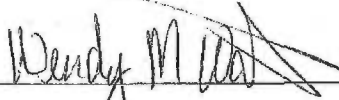
1 FOR THE UNITED STATES OF AMERICA (Cont.)

2  
3  
4 Dated: 2/9/2012



5 Daniel D. Opalski  
6 Director, Office of Environmental Cleanup  
7 Region X  
8 U.S. Environmental Protection Agency  
9 1200 6th Avenue, Suite 900  
10 Seattle, WA 98101

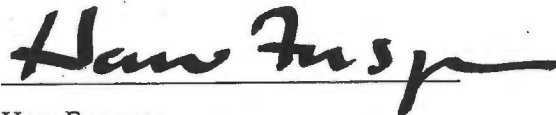
11  
12  
13 Dated: 2-3-12



14 Wendy Watson  
15 Attorney-Adviser  
16 U.S. Environmental Protection Agency  
17 Region X  
18 1200 6th Avenue, Suite 900  
19 Seattle, WA 98101  
20  
21  
22  
23  
24  
25  
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28

1 FOR THE UNITED STATES OF AMERICA (Cont.)  
2  
3

4 Dated: 2/3/12



5 Harv Forsgren  
6 Regional Forester, Intermountain Region  
7 USDA Forest Service  
8 324 25th Street  
9 Ogden, UT 84401  
10  
11  
12  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United  
2 States, et al., v. Bradley Mining Company, et al.

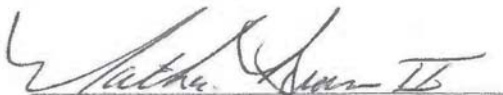
3 FOR THE ELEM TRIBE  
4

5  
6 Dated: January 12, 2012



Brian J. Cleary, Esq.  
The Cleary Law Group, P.C.  
101 West Prairie Center, #362  
Hayden, ID 83835  
Attorney for the Elem Tribe

10  
11  
12 Dated: 1-12-2012



Nathan ~~B~~ Brown II  
Elem Indian Colony Tribal Chairman  
The Elem Pomo Tribe  
~~13300 E. Highway 20, Suite B~~  
P.O. Box 757  
Clearlake Oaks, CA 95423

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United  
2 States, et al., v. Bradley Mining Company, et al.

3 FOR BRADLEY MINING COMPANY AND FREDERICK BRADLEY, AS TRUSTEE OF  
4 THE WORTHEN BRADLEY FAMILY TRUST

5  
6 Dated: 12-5-11



7 Jon K. Wactor  
8 Wactor & Wick LLP  
9 180 Grand Avenue, Suite 950  
10 Oakland, California 94612  
11 Tel: (510) 465-5750  
12 Fax: (510) 465-5697  
13 Attorneys for Defendants Bradley Mining  
14 Company and Frederick Bradley, as Trustee of the  
15 Worthen Bradley Family Trust

16 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

17 Jon K. Wactor  
18 Wactor & Wick LLP  
19 180 Grand Avenue, Suite 950  
20 Oakland, California 94612  
21 Tel: (510) 465-5750  
22 Fax: (510) 465-5697  
23 Attorneys for Defendants Bradley Mining Company and  
24 Frederick Bradley, as Trustee of the Worthen Bradley Family Trust  
25  
26  
27  
28